British Columbia. Office of the Information and Privacy Commissioner : Annual report, 1997/98

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June 25, 1998

105-03874/

The Honourable Gretchen Brewin
Speaker Legislative Assembly of British Columbia
Victoria, British Columbia
V8V 1X4

Dear Honourable Speaker Brewin:
Pursuant to section 51 of the Freedom of Information and Protection of Privacy Act, I have the honour to present my fifth Annual Report to the Legislative Assembly. This report covers the period from April 1, 1997 to March 31, 1998.
Sincerely,

David H. Flaherty

David H. Flaherty
Commissioner

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I. Commissioner's Message

The Myths and Realities of Freedom of Information and Privacy Protection

The Myths

1) Government cannot govern under FOI. It no longer has the freedom to deliberate in private without everything being revealed to the world. Deputy ministers no longer feel free to write briefing notes.
Sections 12 and 13 of the Act provide explicit protection for Cabinet confidences and policy advice or recommendations, which allows the government to engage in policy-making within "a zone of confidentiality." Decisions of the Commissioner have reinforced this concept.

2) FOI is too expensive, and there is almost no cost recovery.
FOI and privacy protection are fundamental democratic and human rights, which necessarily involve the expenditure of public funds. The comparative cost of these and other fundamental advances in B.C. society are relatively modest in relation to the wide-ranging benefits to British Columbians in ensuring that government is accountable for its actions and properly protects the privacy of personal information entrusted to it.

3) A common government view is that the introduction of FOI brings no measurable political benefits.
Government refuses to acknowledge that FOI and privacy protection is among its major contributions and was passed unanimously by all parties. It is natural that any incumbent government will have occasion to dislike the practice of open, accountable government, because controlling the flow of information is a key exercise of power. Conversely, Opposition parties will trumpet the virtues of freedom of information before and after they exercise power.

4) Freedom of information undermines democracy in British Columbia.
In fact, FOI promotes democracy by ensuring that the people who have empowered the government have the right to be informed of its decisions and the reasons for them. FOI does, however, undermine government's absolute control over the flow of information to the public, as with the Westminster and "Yes Minister" models of government.

5) All of the FOI requests are from Opposition parties and the media.
Opposition and media requests combined make up less than ten percent of all requests for information. Further, the Opposition has no other formal method of accessing information, except for Question Period.

6) No one writes things down anymore, so record-keeping has suffered.
All hierarchical bureaucracies require records in order to function, and B.C. is no exception. Although there is no requirement under the Act to create or maintain records, there could be sanctions for unauthorized destruction or alteration of existing records, especially after an FOI request had been made, as occurred federally in the aftermath of the Somalia inquiry.

The Realities

• The Legislature sets the ultimate rules on open government and privacy protection in a democratic

society.

• The Act sets out the rules for disclosure of records to applicants.

• Very few applicants use the Act irresponsibly.

• Most decisions made by a public body under the Act are not challenged by applicants.

• Over ninety percent of requests for review brought to the Commissioner's Office are resolved through mediation.

• The Commissioner becomes the *referee* and final decision maker under the Act only when an applicant and public body disagree and mediation is unsuccessful.

• After five years of applying the Act, most Orders made by the Commissioner uphold the decisions of public bodies, which are aware of their obligations under the Act and largely do a good job of applying it correctly.

• More than sixty percent of requests under the Act are by individuals seeking their own personal information.

• The provisions of the Act on fair information practices require public bodies to protect the privacy interests of individuals.

• Open, accountable government promotes democracy and democratic rights. Meaningful FOI and privacy rights seek to reduce the risks of bureaucratic rule, autocratic rule, and surveillance societies.

• The public has a right to know how its money is being spent, how decisions are made, and the reasons for them.

• Privacy protection and FOI are "public goods" comparable to the public demand for free public education, open elections, and the rule of law.

• The implementation of privacy rights benefits customer relations, employee relations, better records management and information system practices, and more effective planning operations.

• FOI and privacy protection promote and encourage good records management.

• Effective FOI and privacy protection require a committed bureaucracy.

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II. Director's Message

The Four-Year Legislative Review Process

Section 79 of the *Freedom of Information and Protection of Privacy Act* states that "a special committee of the Legislative Assembly must begin a comprehensive review of this Act within 4 years after section 4 comes into force and must submit to the Legislative Assembly, within one year after beginning the review, a report that includes any amendments recommended by the committee."

The Special Committee was created by a motion of the House on July 29, 1997 and their first meeting was October 2, 1997. At the time of writing, the committee had held 11 meetings: one organizational meeting, two briefing meetings, and eight public meetings. They had received 80 written submissions and heard about 50 oral submissions. A number of these submissions overlap, since many people who presented oral submissions to the Committee followed up with a written submission.

The Information, Science and Technology Agency (ISTA) of the Ministry of Advanced Education, Training and Technology, gave the first briefing to the Special Committee. Staff of ISTA explained central government's perspective on the workings of the legislation and the pressures it creates. The Commissioner's Office also briefed the Committee. The Office told the Committee that the legislation is working well. It explained how the Office carries out its legislative mandate and how it handles requests for review and complaint files. It also produced relevant statistics and described the role of the Commissioner in detail. The strong message to the Committee from both ISTA and the Commissioner's Office was that radical changes to the legislation are neither required nor desirable.

The Committee held public meetings in Vancouver, Burnaby, Abbotsford, Kelowna, Kamloops, and Prince George. There, it received a wide range of submissions from individuals and groups. One issue commonly raised was the length of time that public bodies took in responding to requests for records. A second major issue was fees; participants argued that they were a barrier to access and should definitely not be increased.

Public bodies subject to the Act also made presentations to the Committee. Many public bodies were concerned about the cost of processing FOI requests, although most agreed that the principles of the legislation were important and should be upheld.

At the time of writing, the Special Committee had not been reconstituted by the Legislature, as is required to make it functional during the current sitting of the House. It thus has no official status. The Committee must report to the Legislature by October 1998.

It is my hope that the House will have reconvened the Committee by the time this report is tabled in the Legislature. I urge everyone who has an interest in the legislation to step forward and make their views known to the Committee. There is no doubt that government is considering changes to the way citizens can access government information and how much it will cost them. The Special Committee reviewing the Act provides individuals with a powerful and valuable tool for ensuring their views about access to government information and the protection of privacy are heard.

For more information about the Special Committee reviewing the *Freedom of Information and Protection of Privacy Act,* please contact Neil Reimer, Committee Clerk, Legislative Assembly of British Columbia, tel: (250) 356-6318 (collect); fax: (250) 356-8172; e-mail:

neil.reimer@lass.gov.bc.ca; or web site: http://www.legis.gov.bc.ca/cmt/#Privacy.

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III. Introduction

This is the Office of the Information and Privacy Commissioner's fifth Annual Report. It explains the legislative mandate and role of the Commissioner's Office and provides information about its activities between April 1, 1997 and March 31, 1998.

The Office of the Information and Privacy Commissioner

The Office of the Information and Privacy Commissioner was established in July of 1993 in accordance with the framework set out in British Columbia's *Freedom of Information and Protection of Privacy Act* (1992). The role of the Commissioner's Office is to monitor the access to information and protection of privacy practices of public bodies in British Columbia. Public bodies include ministries, Crown corporations, and government agencies, boards, and commissions; local public bodies, such as hospitals, schools districts, municipalities, colleges, and universities; and self-governing professional bodies, such as the Law Society of British Columbia and the British Columbia College of Physicians and Surgeons. The Office's major activity is reviewing decisions made by public bodies about individuals' right of access to records in the public bodies' custody or control. The Office also investigates complaints by individuals about public bodies' protection of the privacy of personal information. The Office may comment on legislation or public policy affecting information and privacy rights, and inform the public about these rights. The head of the Office is the Information and Privacy Commissioner, who is a non-partisan officer of the Legislature and independent of government. This independence allows the Commissioner to provide an impartial review of government's compliance with the Act. The Commissioner is appointed for a six-year, non-renewable term of office, which, for the present Commissioner, David Flaherty, extends from August 1, 1993 to July 31, 1999.

The Freedom of Information and Protection of Privacy Act

The *Freedom of Information and Protection of Privacy Act* gives individuals two major rights: the right of access to records in the custody or control of a public body in British Columbia, including one's own personal information, and the right of protection of the privacy of personal information. The Act provides further related rights, such as the right to request the correction of personal information if it is inaccurate, and the right to askthe Information and Privacy Commissioner to investigate disputes about information and privacy rights. In short, the overall purposes of the Act are to make public bodies more accountable to the public and to protect personal privacy.

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IV. Requests for Review

Introduction

Section 52 of the *Freedom of Information and Protection of Privacy Act* authorizes the Commissioner to "review any decision, act, or failure to act" of a public body resulting from a request for records. This includes decisions about the disclosure of records, corrections to records, time extensions, and fees.

The Request for Review Process

Requests for review are received by the Office's Intake Officers, who review them and may contact applicants to clarify the facts or circumstances. If a request for review can proceed, the Intake Officers will assign it to a Portfolio Officer, who has 90 days to investigate the case and help the parties to resolve their dispute by mediation. If the parties can agree to a mediated settlement, the request for review is closed. If not, the review proceeds to a formal inquiry before the Information and Privacy Commissioner.

Ninety-two percent of requests for review that come to the Commissioner's Office are closed without going to a formal inquiry. The remaining cases are resolved by Orders.

* For further details on inquiries and Orders, please see Chapter VII: Commissioner's Orders.

Samples of Recent Mediated Requests for Review

The following sample summaries of recent mediated requests for review represent the types of issues commonly brought before the Commissioner's Office and the range of mediated settlements it has been able to achieve.

A. Ministries, Crown Corporations, Boards, Agencies, and Commissions

Ministry of Attorney General - family maintenance enforcement records

An applicant made a request to the Ministry of Attorney General for copies of certain letters, memos and notes on file with the Family Maintenance Enforcement Program (FMEP). The Ministry refused to disclose the records on the basis that FMEP files must be kept confidential under section 43 of the *Family Maintenance Enforcement Act*. Section 43 operates not withstanding the access rights set out in the *Freedom of Information and Protection of Privacy Act*. The applicant appealed the Ministry's decision to the Commissioner's Office.

Through mediation, the Office clarified that the applicant's goal in making her request was to find out why the FMEP had changed the status of her file a few months earlier. Although the Office agreed with the Ministry's determination under section 43 of the *Family Maintenance and Enforcement Act*, it suggested alternative ways for the applicant to acquire relevant information to assist her. The applicant learned that she could find out if there was a particular court order concerning her on file, since court orders are routinely released by the FMEP to *bona fide* interested parties. The applicant also discovered

that she could use a section of the *Freedom of Information and Protection of Privacy Act* to require that the FMEP include her written comments on file concerning a letter she believed the FMEP had taken into consideration when administering the file.

Mediation also resulted in the FMEP offering the applicant a written explanation for the change in the status of her file, and the case was closed.

Ministry of Attorney General, Corrections Branch - counselling records

An applicant made a request to the Ministry of Attorney General for information concerning a particular inmate's participation in alcohol and drug counselling. The inmate had been convicted of murdering a member of the applicant's family.

At the sentence hearing, the court took into consideration as a mitigating factor the inmate's participation in alcohol and drug counselling while in custody awaiting conviction. The applicant wanted to confirm whether the inmate had participated in the counselling as submitted. However, the Corrections Branch refused to confirm or deny it, stating that disclosure would be an unreasonable invasion of the inmate's personal privacy. The applicant appealed to the Commissioner's Office.

As a result of mediation, the Corrections Branch agreed to confirm for the applicant that the inmate had, indeed, participated in counselling. It provided this confirmation, however, without revealing any details of the counselling or disclosing actual records. The applicant was satisfied with this information and the case was closed.

Ministry for Children and Families - adoption records

An applicant requested her adoption information from the Ministry for Children and Families. The Ministry granted her access to the records, but severed certain personal information belonging to other individuals. The Ministry stated that disclosure would be an unreasonable invasion of their personal privacy. The applicant asked the Commissioner's Office to review this decision, since she was seeking information about a sibling who had been adopted and then returned to the Ministry. This information had been severed from the record.

Through mediation, it was clear that, although the applicant was not mentioned specifically in the severed pages, she was nonetheless directly affected by the circumstances leading to the decision to reverse the adoption of her sibling. Since the situation of this case was unique, the Ministry agreed to release the previously-withheld information to the applicant, noting that the information they contained was in fact shared information between the applicant and other individuals even though the applicant was not specifically named therein.

Ministry of Environment, Lands and Parks - business records

The applicant, a business person, requested records from the Water Management Branch of the Ministry of Environment, Lands, and Parks concerning
a resort company he owned. He requested records spanning a twenty-year period. The context was an ongoing dispute about the water supply to a local improvement district, which supplies water to the surrounding area. The Ministry refused to release portions of the records to the applicant on the basis that they contained policy advice, were protected by solicitor-client privilege, and would unreasonably invade an individual's personal privacy. The applicant appealed the decision to the Commissioner's Office.

During mediation, the applicant identified 32 pages of records with severances that he wanted reviewed. The Commissioner's Office invited the Ministry to provide a written explanation of each of the

severings. As a result of mediation, the Ministry released one of the records it had withheld under solicitor-client privilege and some others it had withheld under policy advice. It also agreed to search its files for additional records.

Mediation had clarified that the record withheld by the Ministry under solicitor-client privilege had not been created by the Minister of Attorney General in its capacity as solicitor to the Ministry of Environment, Lands and Parks. As such, it was not entitled to solicitor-client protection. The applicant accepted, however, that some records still withheld under policy advice were legitimately protected from disclosure, since they were advice between other public bodies which, according to Orders by the Commissioner, have a right to provide advice within a zone of confidentiality.

The applicant accepted the Ministry's explanation for the remaining severances and the case was closed.

Ministry of Forests - fee assessments

In December of 1996, an environmental group requested records from the Ministry of Forests (the Ministry) related to the way in which the Ministry and licensees were expected to deal with representatives of the Ministry of Environment, Lands and Parks concerning the application of the Forest Practices Code. In April of 1997, after considerable discussion with the applicant, the Ministry provided the environmental group with a fee estimate of $46,200 to cover time spent searching for the records and processing the request.

The request was narrowed further and the Ministry successively issued two more fee estimates: $12,450 and $3,150. With each fee estimate, the applicant requested a fee waiver in the public interest, but the Ministry refused. In July of 1997, the applicant requested that the Commissioner's Office review the decision.

The Office was able to mediate a further reduction of the fee to $420
after the applicant provided examples of the records he was seeking. The Ministry was then able to determine more accurately the potential location of records and to reduce its estimated time spent searching for them to
two days. After further discussion, the Ministry waived the fees entirely
and the case was closed.

* The complaint related to this request for review is summarized in Chapter V in "Samples of Recent Complaints."

Ministry of Health and Ministry Responsible for Seniors - fee assessments

An applicant made two separate requests for records to the Ministry of Health for selected types of correspondence sent and received by two different Ministry program areas. He wanted all these records for the period of 1991 to the present. The Ministry advised the applicant that he would have to pay a fee in the range of $13,000. It explained that a significant portion of the estimate related to records created prior to 1994, which were digitally-stored off-site at the former British Columbia Systems Corporation (BCSC).

During mediation, the applicant learned that the disk space required to retrieve stored correspondence for those years so that it could be searched for documents responsive to his request would cost $5,000. The applicant subsequently agreed to drop the portion of the request for records created prior to 1994. Fees for the remaining records from 1994 to the present were assessed at $4,500. The applicant requested a fee waiver for these records in the public interest, which the Ministry denied.

Further discussion with the parties revealed that the Ministry maintains a correspondence tracking system for both program areas from which the records had been requested. The system provides the date

received, subject matter, sender's identity, recipient of the correspondence, and whether a response is indicated. The Ministry explained that it had not utilized this device to respond to the applicant, since the Ministry was unsure whether all documents it had received had been tracked and listed.

The applicant was told about this tracking system and given the choice of paying for a page by page search for documents, as initially indicated by the Ministry, or of scanning a list that captured the majority of the correspondence he was looking for. The applicant chose the latter, scanned two lists, and selected a few documents of interest. Due to the small volume of records selected, the Ministry did not charge him any fees.

Insurance Corporation of British Columbia - job evaluation and classification records

An applicant requested a copy of a job evaluation and reclassification plan from the Insurance Corporation of British Columbia (ICBC). The applicant was an ICBC employee, who was unsatisfied with his position classification rating as a result of the job evaluation project. ICBC withheld part of the plan under the *Freedom of Information and Protection of Privacy Act*, citing possible harm to the financial or economic interests of ICBC if the entire plan were disclosed before completion of the job evaluation exercise.

As a result of mediation, the Commissioner's Office was able to confirm for the applicant that premature disclosure of the plan to him or the public could indeed cause financial or economic harm to ICBC, since it could result in employees trying to answer the questionnaire in a way that would give them the highest job ratings and thus would increase pay levels.

The applicant accepted ICBC's explanation with the recognition that he still had the right to grieve his job classification. His union has full access to the plan and is able to assist members in understanding and assessing the validity of job ratings. The case was closed.

PSERC - harassment investigation records

A government employee requested statistical information from the Public Service Employee Relations Commission (PSERC) regarding the number and final outcome of investigations into complaints of workplace and sexual harassment within the provincial government. He made his request in the form of a series of questions rather than a request for records. PSERC responded that it only had files for those cases referred to PSERC, and that there were 31 such cases. Although PSERC answered several of the applicant's questions, it stated that it could not answer others without first analyzing the records. It also refused access to some of the records on grounds that it would be an unreasonable invasion of the personal privacy of the individuals involved. The applicant appealed to the Commissioner's Office.

During mediation, the Office explained to the applicant that the general right to request access to records does not extend to the right to request answers to specific questions. The Office also advised the applicant that he would not fulfill his purpose of obtaining meaningful statistical information on harassment investigations by requesting records that would ultimately be severed to protect individuals' privacy, since they would then be incomplete. The Office determined, however, that 15 of the 31 harassment files were considered fully concluded, and asked PSERC to provide basic statistical information about them to the applicant. The applicant was satisfied with this resolution and accepted that the rest of the information he wanted was not yet available.

PSERC - job classification records

Several government employees, frustrated that a classification review begun over five years ago had not been concluded, requested all records related to the review, including interview notes, correspondence, and e-mail messages. PSERC released a substantial amount of records, but withheld some information on grounds that it was policy advice, could reasonably harm PSERC's financial or economic interests, or

would be an unreasonable invasion of the individuals' personal privacy. The applicants asked the Commissioner's Office to review the decision, including the possibility that some records were missing.

As a result of mediation, the Office was able to persuade PSERC to release a small amount of additional information, but concluded, after a full review of the records, that most of the information withheld fell under the exceptions to disclosure claimed by PSERC. The Office advised the applicants that, in its opinion, PSERC had conscientiously severed the records so as to provide the applicants with as much information as possible, including partial pages and paragraphs. The applicants accepted the Office's opinion and agreed to consider the matter settled.

Ministry of Transportation and Highways - fee assessment

A construction company had requested all records pertaining to eight highway construction projects. The Ministry provided a fee estimate of $4,350. The company asked the Ministry to waive the fee in the public interest, since it needed the records to defend itself in litigation. The Ministry refused to waive the fee, stating that the records could be obtained through a court order.

As a result of mediation, the Office arranged for the Ministry to let the applicant supply his own paper for copying the records, which reduced the fee by $3,000. The applicant was satisfied with this solution and the case was closed.

B. Local Public Bodies

Hospital - mortality review records

The applicant, a mother, requested a copy of the Perinatal Mortality Review after her child died in a British Columbia hospital. Such reviews are done by hospitals to examine the circumstances surrounding the treatment of a patient who subsequently died and to make recommendations on how that treatment could have been improved. The hospital refused to disclose the review to the mother, citing section 51 of the *Evidence Act*, which overrides the operation of the *Freedom of Information and Protection of Privacy Act* (the Act). The mother appealed to the Commissioner's Office.

Although the Office confirmed for the applicant that section 51 of the *Evidence Act* effectively prevented the hospital from providing the results of the review to her or any of the parties involved, the thrust of its mediation efforts were directed at assisting the mother to achieve access to the records through some alternative means.

The Office worked at various solutions but ultimately was unsuccessful. The applicant abandoned her request and the Office reluctantly closed the case.

Police Department - investigation records

An applicant requested information regarding the death of his brother. The applicant had just been advised by a third person that his brother had died several months previously and, further, that the police had been called. The deceased brother had become estranged from his family in the last year of life, so the Police Department advised the applicant that access to records related to his brother was denied on grounds that it would unreasonably invade his brother's personal privacy.

The applicant appealed to the Commissioner's Office. During mediation it became apparent that the applicant was the legal guardian of the deceased, and had, in fact, been formally recognized as such in the Police Department's records on prior occasions. But at the time of death, the applicant had not been notified. Another party had been given official notification instead due to an error in information provided to the public body at the time of death. The applicant and the other party did not know each

other.

The Office assisted the applicant in providing supporting documents to the Police Department proving the applicant's official status as legal guardian of his deceased brother. The Police Department then granted the applicant access to the records of his brother's death.

Regional District - letter of complaint

An applicant requested access to documents pertaining to a complaint against her and her property. The complainant alleged that the applicant was operating a business on her property, in violation of local zoning bylaws. The Regional District had corresponded with the applicant on the alleged violation and considered the matter resolved. However, the applicant wanted access to the letter of complaint against her, which the Regional District subsequently denied on grounds that it was a law enforcement matter, would harm individual or public safety, and was an invasion of personal privacy. The applicant appealed to the Commissioner's Office.

Through mediation, the Office determined that the letter that had sparked the investigation had come from a board director, an elected official of the Regional District. Recognizing that elected officials often act as conduits for complaints from their constituents, the Office was able to determine that the board director had made the complaint on behalf of the applicant's neighbours. Since the board director had been acting in an official capacity as a board director, there was no confidentiality agreement, nor was there evidence that the Regional District had tried to keep the board director's name confidential in its processing of the complaint.

The Office recommended that the Regional District disclose the letter to the applicant, along with one or two other related records. The District refused and the applicant chose to go forward with a formal inquiry before the Commissioner. However, during preparation for the inquiry and the exchange of submissions, the District decided to release the letter and another related document to the applicant. The applicant was satisfied with this result and the inquiry was cancelled.

Regional Health Board - restaurant inspection reports

A reporter from a major media outlet requested access to inspection reports that had resulted in the closure of a number of restaurants. As required by the *Freedom of Information and Protection of Privacy Act*, the Health Board asked each restaurant if they had any objection to the information being released. All but two restaurants agreed to releasing the report. After considering their arguments the Health Board decided to release the records under the Act. The two restaurants appealed this decision to the Commissioner's Office.

Mediation clarified for the restaurants that in order for business information to be withheld under the Act, all three criteria in the section providing for its protection must be met. It also verified that, since the inspection report was a description of the physical and operational conditions of the restaurant and did not contain trade secrets or other such commercial information, it did not meet any of the definitions of business information in the Act. In addition, because the report is compiled by an inspector based on observations made during a visit to the restaurant, and the restaurant is required by law to participate in the inspection, information in the report could not be said to have been provided in confidence. The restaurants accepted this clarification and withdrew their objections.

School District - adequate search

A parent and School District disagreed about the appropriate response by school staff when the parent's child had a seizure. As a result, the District decided to not allow the child to return to school but did arrange for home schooling. The parent subsequently requested all records about the child from the

District and about its decision not to allow the child back in school. The District did not respond within 30 days, as required by the *Freedom of Information and Protection of Privacy Act*, so the applicant appealed to the Commissioner's Office.

During mediation, the District clarified that it had not responded to the request within 30 days because it had not considered the request as having been made under the Act. The District decided to disclose the records to the applicant, withholding only the names of a few outside individuals it had consulted about its decision regarding the child.

The parent was not satisfied that all relevant records had been disclosed. The Office was able to persuade the District twice to continue searching, whereupon it found more records at the child's former elementary school and in District administrators' offices. The District agreed to provide the Office with an affidavit confirming the completeness of its search. The parent accepted this declaration and the fact that the names of individuals could be withheld because they had provided their advice to the District in confidence.

School District - consultant's report

A reporter and a concerned parent each made a request to a School District for access to a consultant's report. The report had been prepared in response to concerns raised about certain management practices and policies within the School District. Before the report was finalized, the School Board had announced that the report would be made public, but after reviewing it and in response to the two requests, decided only to disclose a severed version of the report.

Through mediation, the Office was able to convince the School Board to disclose more factual information to the applicants, including criticisms of the District's current human resources and financial policies. Where the criticism focused on the performance of specific board employees, however, the applicants accepted that disclosure would be an unreasonable invasion of the employees' personal privacy. One administrator, singled out for special criticism in the report, agreed to the disclosure of information about him that had already been disclosed elsewhere. The applicants were satisfied with this solution and the case was closed.

School District - personal information

The parent of a student requested from a School District all records in the custody or control of the District relating to the parent. The District disclosed some records to the applicant, but withheld two pages on the basis that they were reports that had been provided to the District in confidence.

In the course of mediation, the Commissioner's Office clarified that one of the reports concerned a meeting involving the applicant, while the other concerned an incident. The Office discussed the contents of the records with the School District, which subsequently disclosed the "meeting" report to the applicant, along with a detailed summary of the "incident" report.

The applicant accepted the summarized report, but concluded that it contained significant factual errors. The applicant provided the School District with an annotated version of the summary, which contained corrections the applicant considered necessary. The School District attached the annotated summary to the official report, so that the applicant's account of the incident was duly noted in the permanent file.

(NOTE: This electronic version of the Office of the Information and Privacy Commissioner's Annual Report 1997-98 includes corrections for clerical errors that exist in the printed copy.)

V. Complaints

Introduction

Sections 42(2) and 52 of the *Freedom of Information and Protection of Privacy Act* authorize the Commissioner to receive and investigate complaints about a public body's compliance with the Act. Individuals can complain to the Commissioner's Office that a public body has collected, used, or disclosed their personal information inappropriately. They can also complain that a public body has not fulfilled its duty to assist them under the Act. The Commissioner's Office will investigate these complaints and make recommendations and decisions for their resolution.

The Complaint Process

Complaints are received by the Office's Intake Officers, who review the relevant facts and circumstances and may contact the parties for more information. If the complaint can proceed under the Act, the Intake Officers will assign it to a Portfolio Officer, who has delegated authority from the Commissioner to investigate and resolve the issues of the complaint.

Based on the Portfolio Officer's findings, the Commissioner or Portfolio Officer may make recommendations requiring a public body to change the way it collects, uses, discloses, or secures personal information. The Commissioner also may conclude that the issue is systemic or affects a significant number of people and assign it for further investigation and analysis, which may result in the release of a formal Investigation Report. Where a complaint is not substantiated, the Office may dismiss it.

Samples of Recent Complaints

The following sample summaries of complaints are generally illustrative of those normally received by the Commissioner's Office and how the Office handles them.

A. Ministries, Crown Corporations, Agencies, Boards, and Commissions

Ministry of Attorney General - disclosure of probation order

An individual involved in a landlord-tenant arbitration was shocked when her landlord produced a copy of her probation order at the arbitration. She complained to the Commissioner's Office that the Ministry of Attorney General had wrongly disclosed her probation order to the landlord.

During the Office's investigation, the Ministry contacted the applicant's two probation officers to confirm whether either had disclosed the information to the landlord, which both of them denied. The Office also pointed out to the complainant that probation orders are "public" documents obtainable by any individual from the court where the convicted are sentenced. Without evidence indicating otherwise, the Office concluded it was entirely possible that someone, such as the lawyer for the landlord, had obtained a copy of the probation order in this manner. Since it is not an invasion of personal privacy to obtain a public document from the court, the complaint was closed.

Ministry of Attorney General, Gaming Audit and Investigation Office (GAIO) -

collection of information for gaming registration package

The Commissioner's Office received complaints from a number of people, including casino security employees, about GAIO's registration forms, which required them to provide GAIO with large amounts of sensitive financial, criminal, and other information about themselves and their families. The would-be registrants, including casino owners and employees, were being asked to supply information about their financial assets and their income, expenses, and criminal history, and to account for periods of employment. They also were asked to state where they had lived for the last several years and other related personal information.

The Office investigated the complaint, carrying out extensive discussions with GAIO about its reasons for requesting this information. The Office also reviewed relevant B.C. legal authorities, and court decisions from other jurisdictions. It found that GAIO's registration forms, while requiring the collection of a large amount of sensitive personal information, complied with the fair information practices set out in Part 3 of the *Freedom of Information and Protection of Privacy Act*, given GAIO's primary responsibility to ensure the integrity of the gaming industry in British Columbia.

The Office also noted that GAIO restricted access to the forms to only a handful of employees, who had a legitimate need to see the forms in order order carry out their investigations.

British Columbia Racing Commission - mandatory drug testing

The British Columbia Civil Liberties Association (BCCLA) complained to the Commissioner's Office that the Racing Commission's policy of performing mandatory random drug-testing on its licensees is an unreasonable invasion of the licensees' personal privacy. The drug-testing policy extends to horse owners as well as other licensees, including exercise riders and trainers. The BCCLA also complained about the lack of privacy caused by the presence of an observer when urine samples are collected.

The Office investigated the drug-testing policy and found that the *Horse Racing Act* gives the Racing Commission statutory and regulatory authority to conduct random drug tests of its licensees. The Office found that, although the Racing Commission's practice of conducting random drug tests on licensees without reasonable cause is privacy-invasive in principle, the Racing Commission's statutory authority to conduct such tests is valid under the *Freedom of Information and Protection of Privacy Act*.

As a result of this investigation, however, the Racing Commission reviewed its drug-testing policy and issued new guidelines recognizing the need for physical privacy during the collection of urine samples. The policy also includes guidelines for the collection, use, and storage of personal information in compliance with the requirements of the Act. The Commissioner intends to maintain a close watch over such records, given the significance of privacy protection for health and medical records.

British Columbia Securities Commission - disclosure of an arrest warrant

A stock promoter complained to the Commissioner's Office that the B.C. Securities Commission had disclosed an American warrant for her arrest to one of her clients, which led to an unwelcome visit by two threatening individuals to her daughter's home. The promoter felt that the disclosure violated her privacy, since the Securities Commission had no need to release the warrant.

Upon investigation, the Office determined that the Securities Commission had released the warrant information to the client in response to the client's request for information about an investment decision. Since the warrant concerned charges of mail fraud relating to stock promotions, the Commission stated that it felt compelled to release the warrant. The Commissioner's Office confirmed that the role of the B.C. Securities Commission is to protect the investing public and concluded that it had acted in compliance with its mandate.

Ministry of Forests - duty to assist the applicant in a request for review

An environmental group had made a request for review to the Commissioner's Office with respect to the fee the Ministry of Forests wanted to charge for records the group had requested relating to the Forests Practices Code. Along with its concerns about the fee estimate, the group was also dissatisfied with the Ministry's processing of its request. It complained to the Commissioner's Office that the Ministry was not fulfilling its "duty to assist" under the *Freedom of Information and Protection of Privacy Act*.

The group complained that it was dissatisfied with the Ministry's delays, general processing of the request, failure to respond in a timely way, and negligence in informing the applicant of time extensions and changes in the fee estimate. The Office investigated the Ministry's handling of the request and concluded that it had genuinely attempted to assist the applicant and had taken reasonable steps to clarify the request and inform the applicant of a time extension. The Office found, however, that the decentralized nature of the Ministry's request procedures and the involvement of several staff members handling the request contributed to the overall deterioration of its processing. The Office further concluded that the environmental group's own internal processes had contributed to the breakdown.

The Office recommended that the Ministry centralize its system for processing requests for records, improve communications, and implement other changes to its tracking of requests to ensure that it had better control over its timing and responses. The Ministry responded favourably to the recommendations and indicated that it had already begun the improvement process, including providing an extensive training session for its FOI staff and contacts in the field. The Office was satisfied with the Ministry's overall response and undertook, on the applicant's behalf, to monitor the Ministry's improvements over the next several months.

* The request for review related to this complaint is summarized in Chapter IV in "Recent Mediated Requests for Review."

Insurance Corporation of British Columbia (ICBC) - use of personal information collected by private sector insurance brokers

A complainant was concerned about the collection, use, and disclosure of personal information by insurance brokers who sell Autoplan motor vehicle insurance for ICBC. The complainant objected to the brokers' use of personal information they collected from clients during automobile insurance transactions for subsequent solicitations for other insurance products.

The Commissioner's office consulted with ICBC and the Insurance Brokers Association of British Columbia (IBABC) to address this problem. Over a two-year period, the Office worked with these two bodies to develop a privacy code for the protection of personal information.

The new privacy code is intended to apply to all automobile insurance brokers in B.C., and must be in accordance with the requirements of the *Financial Institutions Act*. The code is modelled on the Canadian Standards Association's *Model Code for the Protection of Personal Information* and provides that brokers may only collect, use, and disclose personal information under certain circumstances and in certain ways. It also gives clients a right of access to their personal information and a right to request its correction when there are errors. Most importantly, it provides a standard for compliance and a means by which clients may challenge violators.

The new IBABC privacy code represents another important step towards the introduction of statutory protections for personal information in the private sector. Although the Commissioner's office does not have jurisdiction over the private sector, many companies realize that it is increasingly necessary for both business and ethical reasons to set minimum standards for the appropriate protection of clients' personal information. Federal and provincial governments likely will entrench personal data privacy protection in laws for the private sector over the next several years, which gives incentive for many

private sector bodies to begin self-regulating now to prepare for compliance.

Workers' Compensation Board (WCB) - collection and disclosure of photographs of a claimant's family

A WCB claimant complained to the Commissioner's Office that the WCB had photographed his wife and children while it had him under its surveillance. The claimant also complained that the WCB disclosed these photographs to his employer without his consent.

Although the WCB has wide legislative authority to collect the information it needs for the determination of claims and, further, may disclose claim files to employers, the Office concluded that it was inappropriate under the *Freedom of Information and Protection of Privacy Act* for the WCB to have collected and disclosed photographs of the complainant's wife and children, since it did not need them for claims determination.

During the investigation, the complainant had also complained to the WCB Ombudsman about the issue. The WCB Ombudsman recommended that the WCB black out the faces of identifiable third parties in photographs where they were unnecessary for the purposes of claims adjudication, before placing the photographs on claim files. WCB field staff consequently agreed that, in future, they would assess all photographs, including those with identifiable third parties, for their relevance to the claims process. If not needed, faces of third parties would be blacked out before the photographs were placed on the file.

The Commissioner's Office was satisfied that this change in policy effectively resolved the complaint and would reduce the chances of similar complaints of this nature in the future.

Workers' Compensation Board (WCB) - routine access to claim files

A WCB claimant requested disclosure of his claim files and all other records within the WCB. The WCB's Information and Privacy office followed its normal practice of forwarding the first part of the request, which dealt with the disclosure of the claim files, to its Records Management Department. It retained the second portion of the request, which asked for any additional records, for processing within its own office. The applicant complained about this division of the disclosure processes and the delays he had experienced in receiving copies of his claim files.

The Commissioner's Office found that the WCB's practice of providing routine access to claim files through its Records Management Department was appropriate, and that its turn-around time for disclosure was satisfactory. It concluded that, while the timing and efficiency of this routine disclosure process had waned for a few months, the WCB had taken steps to improve the process, including actively searching out claim files that had been requested, but which were in active use somewhere else within the WCB. The Commissioner closed the complaint file upon review and approval of these actions.

B. Local Public Bodies

Community Service Society - disclosure of counselling information

The complainant alleged that highly sensitive personal information about him and a relative provided to a counsellor during a counselling session had subsequently been disclosed without the complainant's knowledge or consent. The information related to the alleged inappropriate conduct of a professional and the applicant felt the disclosure had put him and his relatives at risk.

Initial consultations conducted by the Commissioner's Office revealed that the organization employing

the counsellor was a Community Service Society, which is not currently covered by the *Freedom of Information and Protection of Privacy Act*. The Ministry of Health has encouraged these organizations, however, to operate within the spirit of the Act, so the Society was willing to participate in the investigation process.

The counsellor acknowledged that information had been shared with the professional, but that it had been obtained from many other sources besides the complainant. The counsellor was adamant that no personally-identifying information had been divulged, but rather that her action was meant to address the professional's inappropriate behaviour. She also asserted that she had not intended any harm to the complainant.

Administrators for the Society stated that there were no policies in place to assist staff in addressing suspicions or perceptions of professional misconduct, nor were there any designated policies or educational materials related to confidentiality or the balance between clients' right to privacy and professional accountability. In fact, the administrators believed that the counsellor had acted in what she perceived to be the best interests of the complainant and the community.

The Office pointed out that one of the difficulties in this kind of situation is that the community is very small and that although names or other personal identifiers may not be disclosed, the mere content of the information can inadvertently reveal who the source or subjects are. The Office advised that it is important to consult with clients when intending to disclose their personal information to a colleague and to choose the most privacy-sensitive avenue for addressing the issue.

The Community Service Society agreed to implement policies that would provide better direction for staff who encountered similar privacy-sensitive situations in the future.

Hospital - collection of patient information

A doctor wrote to complain about a patient survey which asked questions about such things as ethnic background, religion, income, sexual orientation, and disabilities. The doctor also expressed concerns about the statistical validity of the survey, but the Commissioner's Office clarified that its jurisdiction under the *Freedom of Information and Protection of Privacy Act* was limited to access to information and protection of privacy issues.

The Office determined that the initial notification to Hospital staff about the survey did not clearly indicate whether it was voluntary or anonymous. The Office also had concerns about the Hospital's use of volunteers in the distribution, translation, and collection of the surveys, since volunteers are not bound by the privacy principles and practices of the *Freedom of Information and Protection of Privacy Act*. The Office asked the Hospital to provide further information about the survey and the role of the volunteers. It ultimately concluded that the survey was indeed voluntary and that the personal information of patients was properly protected. The Office also found that, where assistance with translation and completing the form needed, it was provided almost exclusively by family members.

Hospital - disclosure of personal information during a harassment investigation

The complaint concerned the treatment of the complainant's personal information during a harassment investigation at a hospital, which the complainant had initiated. In particular, the complainant alleged that the Hospital had disclosed the complainant's home address to the harasser, and that a public ward meeting was held, without the complainant's knowledge, at which other employees were invited to comment on the complainant's conduct.

On the basis of issues raised by the complainant in the harassment investigation, the Hospital hired an external consultant to conduct a general review of the Hospital's harassment investigation process.

When the Hospital became aware of the complainant's privacy issues, it asked the consultant to expand the investigation to include a review of how policies and procedures had been applied in this particular case.

The Hospital acknowledged that while the "spirit of confidentiality" had been broken in both of the situations under review, the breeches were made without malice and with the best intentions in mind. The Hospital claimed that the complainant's home address was inadvertently disclosed to the harasser in a letter that was addressed to both parties, and that the ward meeting was designed to facilitate resolution of a situation that had been occurring for a lengthy period of time.

By the time the Commissioner's investigation was underway, the Hospital had worked with staff to rethink the way that letters had been sent to the parties in harassment investigations. The result is that both addresses will no longer appear on any such letters. The Hospital also acknowledged that its harassment investigation policies and procedures required modification to bring them up-to-date with current accepted practices. It assured the Office that it is presently involved in deciding what changes will improve the investigation process and how it can best implement them. This Office was satisfied with this response and will continue to monitor the Hospital's progress until it has implemented the appropriate changes.

School District - disclosure of a photo without consent

A mother complained that the School District had disregarded her written confirmation that she did not want her son's name, birth date, or photograph to be included in a school calendar. The School's parent advisory committee, along with school staff, created and sold the calendars as a fund-raising initiative. Apparently, in the rush to complete the project, the complainant's son was included in a group photograph for one of the months in the calendar. His name and birth date were not shown.

Prior to the mother's complaint to the Commissioner's Office, the School District had apologized to her and sent a reminder to all school administrators of the importance of respecting the explicit wishes of parents about the disclosure their child's personal information. As a result of the Office's involvement, the complainant accepted that the School's disclosure was the result of human error, and that the District had responded appropriately.

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VI. Statistical Overview

Introduction

The Office of the Information and Privacy Commissioner receives numerous enquiries daily on a wide variety of information and privacy issues. From April 1, 1997 to March 31, 1998, the Office logged over 2,000 telephone enquiries, some dealing with non-jurisdictional issues. Where it is not possible for the Office to resolve an issue over the telephone, callers are invited to submit their requests or complaints in writing. The Office's Intake Officers enter these written requests and complaints into the Office's computerized case-tracking system and assign them to Portfolio Officers for investigation.

General Statistics

This year cases handled by the Commissioner's Office continued to increase from past fiscal years. Figure 3, below, illustrates the overall growth of cases handled by the Commissioner's Office from 1993 to 1998.

Figure 3: Growth of Cases by Fiscal Year

Figure 4, below, illustrates the growth in caseload according to case type and in comparison with the 1995-96 and 1996-97 fiscal years. As indicated, the Office logged 1,970 cases between April 1, 1997 and March 31, 1998. This figure compares to the 1,758 cases logged in 1996-97 and the 1,436 cases logged in 1995-96.

Figure 4: Type of Cases Opened in Fiscal Year 1997-1998 as Compared to Cases Opened in 1995-1996 and 1996-1997

Case Type	**1995-1996**	**1996-1997**	**1997-1998**
Requests for Review	887	993	1,026
Complaints	114	115	95
Public Bodies' Requests for Time Extensions	107	85	81
Legislative or Policy Consultations	8	76	163
Site Visits	22	56	63
Freedom of Information or Correction Requests to the OIPC	18	47	26
Investigations	8	23	31
Requests for Section 43 Authorizations	2	8	9
Non-Jurisdictional/Non-Reviewable Issues	213	182	198
Other	57	233	277
Total	**1,436**	**1,758**	**1,970**

Definitions of Case Types

Requests for Review: An applicant who makes a request for records or a request for correction of personal information may request a review of any decision, act, or failure to act of a public body which relates to that request. Third parties notified during the processing of a request may also request a review of any decision by a public body to give access.

Complaints: Complaints normally concern the collection, use, retention, and disclosure of personal

information by a public body. They may also allege the failure of a public body to perform a particular duty imposed by the Act.

Public Bodies' Requests for Time Extensions: The Act provides 30 days, and in some limited circumstances, 60 days, for a public body to respond to a request for records. Where a public body determines that more than 60 days will be needed to respond to a request, it must request the Commissioner's permission to extend the response time.

Legislative or Policy Consultations: The Office is often asked to review proposed legislation or amendments to current legislation which may affect the information or privacy rights of individuals. The Office may also review policies, procedures, or forms developed by public bodies, which concern the collection, use, and disclosure of personal information.

Site Visits: The Commissioner has authority under the Act to audit the information-handling practices and procedures of public bodies covered by the Act. For the most part, site visits are conducted informally and normally involve a tour of the facility and records areas, and discussion of pertinent information and privacy issues and concerns.

FOI/Correction Requests to the OIPC: The Commissioner's Office is a public body under the Act and, like other public bodies, is required to respond to requests for records and requests for correction of personal information within its custody or control. Section 3(1)(c) of the Act, however, excludes access to records in the Office's possession that relate to its functions under the Act, such as requests for review or complaints.

Investigations: Investigations may result from a complaint or series of complaints, or may be initiated by the Commissioner where there are concerns about systemic information or privacy issues. Investigations may result in a formal Investigation Report, although many are concluded less formally.

Requests for Section 43 Authorizations: Under section 43 of the Act, a public body may ask the Commissioner for authorization to disregard requests for records that are of a repetitious or systematic nature and would unreasonably interfere with the operations of the public body.

Non-Jurisdictional Complaints and Enquiries / Non-Reviewable Issues: Non-jurisdictional complaints and enquiries include complaints to the Office about private sector organizations or professionals, such as doctors, dentists, lawyers, insurance companies, credit bureaus, banks, and federal government agencies. Such bodies and individuals are not covered by the Act. Non-jurisdictional complaints also include complaints against public bodies covered by the Act, but which do not involve a freedom of information or protection of privacy issue.

Non-reviewable issues involve freedom of information or protection of privacy concerns related to public bodies under the Act, but are determined to be "non-reviewable" by the Office because the applicant has requested a review either before the public body has made a decision or has had an opportunity to make a decision.

Other: This category includes projects, systems reviews, public education, presentations, applications for time extensions by individuals who have missed the timeline for submitting requests for review to the Office, and information enquiries about the Act. Projects and systems reviews are often initiated by the Commissioner and result from a particular systemic or public interest issue.

A. Requests for Review

From April 1, 1997 to March 31, 1998, the Office opened 1,026 requests for review. The grounds for these requests and their disposition are set out in Figure 5, below. Since many requests for review

coming to the Commissioner's Office contain multiple issues, each review has been categorized by its predominant grounds for review only.

Figure 5: Disposition of Requests for Review Received Between April 1, 1997 and March 31, 1998 by Grounds

Grounds	Open	Mediated	Order	Discontinued*	Total
Access:					
Denied Access	44	161	2	9	216
Partial Access	109	289	10	8	416
Adequacy of Search	23	61	4	6	94
Correction Request	0	11	2	1	14
Deemed Refusal	8	135	0	2	145
Fees	21	25	1	2	49
Third Party Request for Review	6	14	1	4	25
Time Extensions	1	17	0	0	18
Other	14	29	2	4	49
Total	**226**	**742**	**22**	**36**	**1,026**

**"Discontinued" indicates those requests for review that have been abandoned or withdrawn*

Definitions of Grounds for Review

Denied Access: This is a review of a decision by a public body to deny access to all of the records requested.

Partial Access: This is a review of a public body's decision to sever or withhold certain records from those requested.

Adequacy of Search: This is a review of whether further records exist. The issue is whether a public body conducted an adequate search for all relevant records.

Correction Request: This is a review of a public body's decision not to correct personal information.

Deemed Refusal: This is a review of a public body's failure to respond to a request within the designated time frame. The Act considers this failure to be a decision to refuse access to the record.

Fees: This is a review of the fees assessed by a public body for access to records, or a review of its decision not to waive fees when requested by the applicant.

Third Party Request for Review: This is a review of a public body's decision to provide an applicant with access to the personal or business information of a third party.

Time Extension: This is a review of a public body's decision to extend the time limit for responding to a request for records.

Other: This includes reviews of whether a public body has met a duty imposed by the Act and whether the requested records fall within the scope of the Act. Often these reviews concern section 6, which is the duty to assist applicants, and issues around the custody or control of a record.

B. Complaints

From April 1, 1997 to March 31, 1998, the Office opened 95 complaints. Most complaints alleged the inappropriate collection, use, or disclosure of personal information. Other complaints alleged the failure of a public body to perform a duty imposed by the Act, such as assisting an applicant. Since many

complaints involve more than one issue, they have been categorized in Figure 6, below, by their predominant grounds for complaint only.

Figure 6: Disposition of Complaints Received Between April 1, 1997 and March 31, 1998

Grounds	Open	Fully or Partially Substantiated	Unsubstantiated	Discontinued*	Total
Failure to Perform a Duty	4	4	3	1	12
Inappropriate Collection	13	3	24	0	40
Inappropriate Disclosure	15	7	16	2	40
Inappropriate Use	1	1	1	0	3
Total	**33**	**15**	**44**	**3**	**95**

** "Discontinued" complaints indicates those which have been abandoned or withdrawn.*

Definitions of Grounds for Complaint

Failure to Perform a Duty: This is an investigation into the allegation that a public body has failed to perform a duty imposed by the Act, such as its duty to assist an applicant.

Inappropriate Collection: This is an investigation into the allegation that a public body has inappropriately collected personal information about an individual under the Act.

Inappropriate Disclosure: This is an investigation into the allegation that a public body has inappropriately disclosed personal information about an individual under the Act.

Inappropriate Use: This is an investigation into the allegation that a public body has inappropriately used personal information about an individual under the Act.

Applicant Statistics

One of the questions most frequently asked of the Commissioner's Office is: "Who is making requests for review and complaints?" This is a difficult statistic to track accurately, since the Act does not require applicants to identify themselves as belonging to a particular group. This may render the category of "Individuals" slightly higher than is actually the case. However, where applicants do identify an affiliation, their requests or complaints are categorized accordingly. Figure 7, below, sets out the most common categories.

Figure 7: Requests for review and Complaints from April1, 1997 to March 31, 1998 by Type of Applicant

Type of Applicant	Request for Review	Complaint	Percentage of Total
Individuals	715	85	71.4
Commercial	93	4	8.6
Media	120	1	10.8
MLA	8	3	1.0
Special Interest Groups*	14	1	1.3
First Nations Organizations	13	0	1.2
Other Organizations **	63	1	5.7
Total	**1,026**	**95**	**100.0**

** e.g. environmental, wildlife, human rights groups, etc.*

*** e.g. unions, associations, societies, non-commercial organizations, etc.*

Public Body Statistics

Some public bodies are the subject of requests for review or complaints to the Commissioner's Office more often than others. Normally, it is because they possess or handle more personal information than

other public bodies. It also may reflect ongoing disputes about certain types of records, issues, or policies of a particular public body.

A. Requests for Review

Figures 8 and 9, below, identify the number, disposition, and grounds of requests for review for this fiscal year, categorized by public body. Figure 8 sets out their disposition, while Figure 9 identifies the grounds upon which they were requested.

Note that there have been no requests for review made against the majority of public bodies under the Act. The total of 354 reviews for "All Other Public Bodies" noted in Figures 8 and 9, below, represents, for the most part, the one or two reviews that have been filed against 167 public bodies other than the ones specifically listed. None of these 167 public bodies received more than nine requests for review in total.

Figure 8: Disposition of Requests for Review Received Between April 1, 1997 and March 31, 1998 by Public Body.

Public Body	Requests for Review	Open	Mediated	Discontinued	Order
Children and Families	150	24	118	4	4
Insurance Corp. of BC	82	24	56	2	0
Attorney General	74	13	54	3	4
Vancouver Police Department	51	6	42	3	0
Health	47	6	39	2	0
Workers' Comp. Board	42	12	30	0	0
Environment, Lands and Parks	37	7	25	4	1
Finance and Corporate Relations	35	9	22	2	2
Forests	27	7	18	2	0
Human Resources	25	3	22	0	0
Transportation and Highways	16	1	14	0	1
Employment and Investment	15	5	10	0	0
University of British Columbia	15	7	8	0	0
Law Society of British Columbia	13	7	5	0	1
College of Physicians and Surgeons	12	4	8	0	0
Education, Skills and Training	11	1	9	1	0
BC Hydro and Power Authority	10	2	7	0	1
Simon Fraser University	10	4	5	1	0
All Other Public Bodies*	354	82	252	12	8
Total	**1,026**	**226**	**742**	**36**	**22****

**See explanation of this category and its total figure of 354 in the paragraph above.*

*** This figure does not represent the total number of of orders issued between April 1, 1997 and March 31, 1998. It represents the disposition of requests for review received between these dates. Some of the cases are still open and may be discontinued or resolved by mediation. For the total number of Orders issued during this past fiscal year, please see the next section of this chapter, entitled, Disposition of Cases.*

Figure 9: Grounds of Requests for Review Received Between April 1, 1997 and March 31, 1998 by Public Body

	Total	Adequate Search	Correction Request	Deemed Refusal	Denied Access	Fees	Partial Access	Third Party	Time Extension	Other
Children and Families	150	8	3	32	13	0	93	0	0	1
Insurance Corporation of	82	0	0	11	6	1	64	0	0	0

BC Attorney General	74	14	0	3	14	4	22	0	6	11
Vancouver Police Department	51	4	1	0	18	0	23	1	0	4
Health	47	2	3	12	4	5	20	0	1	0
Workers' Compensation Board	42	14	1	2	3	2	13	0	1	6
Environment, Lands and Parks	37	5	0	6	9	1	12	3	0	1
Finance and Corporate Relations	35	2	0	5	6	3	13	5	1	0
Forests	27	4	0	10	2	4	4	1	0	2
Human Resources	25	3	0	12	1	0	8	0	0	1
Transportation and Highways	16	3	0	1	3	3	6	0	0	0
Employment and Investment	15	1	0	0	4	3	6	0	1	0
University of British Columbia	15	1	0	0	0	4	7	0	0	3
Law Society of British Columbia	13	1	0	0	1	0	9	1	0	1
College of Physicians and Surgeons	12	1	2	1	2	0	3	1	2	0
Education, Skills and Training	11	1	1	4	1	0	4	0	0	0
BC Hydro and Power Authority	10	0	0	0	4	1	2	2	1	0
Simon Fraser University	10	0	0	0	1	1	5	0	1	2
All other Public Bodies*	354	30	3	46	124	17	102	11	4	17
Total	**1,026**	**94**	**14**	**145**	**216**	**49**	**416**	**25**	**18**	**49**

**See explanation of this category and its total figure of 354 in the paragraph above.*

B. Complaints

As discussed under the section General Statistics, complaints normally involve allegations against public bodies of their inappropriate collection, use, or disclosure of personal information. They also include allegations that a public body has failed to perform a duty imposed by the Act.

Figures 10 and 11 below indicate the number, status, and grounds of complaints that were handled by the Commissioner's Office from April 1, 1997 to March 31, 1998, categorized by public body. Figure 10 indicates the disposition of complaints to the Commissioner's Office, while Figure 11 indicates the grounds upon which they were made.

Note that there have been no complaints filed against the majority of public bodies covered under the Act. The category of "All Other Public Bodies" and its total figure of 23 represent single complaints made against 23 public bodies other than the ones specifically listed.

Figure 10: Disposition of Complaints Received Between April 1, 1997 and March 31, 1998 by Public Body

Public body	Total	Open	Fully or Partially Substantiated	Not Substantiated	Discontinued	Order
Human Resources	20	2	1	17	0	0
Insurance Corp. of BC	10	5	2	3	0	0
Attorney General	8	3	0	5	0	0
Workers' Compensation Board	8	2	3	3	0	0
Children and Families	7	3	2	2	0	0
Health	7	2	1	4	0	0
Finance & Corp. Relations	3	1	0	1	1	0
Forests	3	3	0	0	0	0
Labour	2	1	0	1	0	0
St. Paul's Hospital	2	0	2	0	0	0
University of Victoria	2	1	0	0	1	0
All Other Public Bodies*	23	10	4	8	1	0
Total	**95**	**33**	**15**	**44**	**3**	**0**

** See explanation of this category and its total figure of 23 in the paragraph above.*

Figure 11: Grounds of Complaints Received Between April 1, 1997 and March 31, 1998 by Public Body

Public Body	Total	Collection	Disclosure	Duty	Use
Human Resources	20	15	4	1	0
Insurance Corp. of BC	10	3	5	1	1
Attorney General	8	4	4	0	0
Workers' Compensation Board	8	1	5	1	1
Children & Families	7	1	5	1	0
Health	7	4	1	2	0
Finance & Corp. Relations	3	1	1	1	0
Forests	3	0	0	3	0
Labour	2	2	0	0	0
St. Paul's Hospital	2	1	1	0	0
University of Victoria	2	0	2	0	0
All Other Public Bodies*	23	8	12	2	1
Total	**95**	**40**	**40**	**12**	**3**

** See explanation of this category and its total figure of 23 in the paragraph above.*

Disposition of Cases

Between April 1, 1997 and March 31, 1998, the Commissioner's Office disposed of 958 requests for review, 97 complaints, and 26 investigations. These cases were settled by mediation, Order, Investigation Report, recommendation, or by less formal means. Figures 12 through 17, below, set out the disposition of these cases according to their type of settlement.

A. Requests for Review

Of the 958 requests for review the Office closed during this past fiscal year, 68 required settlement by an Order. This means that, only 7.1 percent of requests for review resulted in a formal inquiry before the Information and Privacy Commissioner. This low percentage of formal inquiries and Orders is due to the Office's strong emphasis on mediation as the primary tool for resolving disputes. Indeed, the Office has

worked to establish itself as a centre of alternative dispute resolution for information and privacy issues.

Figures 12 and 13, below, set out the disposition of requests for review between April 1, 1997 and March 31, 1998. Note that the total figure of 68 for requests for review resulting in Orders this year is not the total figure for the number of Orders actually issued. As set out in the section entitled Disposition of Commissioner's Orders, below, the total number of Orders issued during this past fiscal year was 64. The difference between these totals is due to the fact that some requests for review this year were made by the same applicant and involved similar records and issues. The Commissioner combined these reviews into one inquiry, issuing only one Order per inquiry.

Figure 12: Disposition of requests for Review Closed Between April 1, 1997 and March 31, 1998

Type of Settlement	**Number**	**Percentage**
Mediated	839	87.6
Discontinued	51	5.3
Order	68*	7.1
Total	**958**	**100.0**

** See explanation of this category and its total figure of 68 in the paragraph above.*

Figure 13: Type of Settlement of Requests for Review Closed Between April 1, 1997 and March 31, 1998

B. Complaints

Unlike requests for review, complaints are not normally resolved though the inquiry process. They are resolved through investigation, which typically results in findings that the complaint, in full or in part, is either substantiated or not substantiated. Where a complaint is substantiated, the Commissioner's Office makes recommendations to a public body for changes to its existing policies or practices. Where a complaint is not substantiated, the case is closed.

Figures 14 and 15, below, set out the disposition of complaints received by the Commissioner's Office between April 1, 1997 and March 31, 1998. Figure 13, in particular, presents a visual perspective of the disposition of complaints by percentage.

Figure 14: Disposition of Complaints Closed Between April 1, 1997 and March 31, 1998

Type of Settlement	**Number**	**Percentage**
Not Substantiated	61	62.9
Partially or Fully Substantiated	31	32.0
Discontinued	5	5.1
Total	**97**	**100.0**

Figure 15: Disposition by Percentage of Complaints Closed Between April 1, 1997 and March 31, 1998

C. Investigations

As indicated under the section, General Statistics, the Commissioner's Office may conduct investigations either as the result of a particular complaint or complaints, or where it determines that the subject of complaint represents a significant or systemic information or privacy issue. Such investigations may result in a formal Investigation Report, although many are concluded less formally by making recommendations for changes to a public body's current policies or practices.

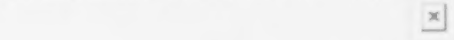
The Office completed 26 investigations this year. Three resulted in the release of a formal Investigation Report. The remaining 23 investigations were concluded less formally. Figures 16 and 17 set out the

disposition of this year's investigations below. Figure 17, in particular, presents a visual perspective of the disposition of investigations by percentage.

Figure 16: Disposition of Investigations Closed Between April 1, 1997 and March 31, 1998

Type of Settlement	Number	Percentage
Completed Less Formally	23	88.5
Completed with investigation Report Issed	3	11.5
Total	**26**	**100.0**

Figure 17: Disposition by Percentage of Investigations Closed Between April 1, 1997 and March 31, 1998



Disposition of Commissioner's Orders

Between April 1, 1997 and March 31, 1998, the Commissioner released 64 Orders. Fifty-three of the Orders upheld the decision of the public body, while six of them overturned a public body's decision. Four of the Orders contained a split decision, and one was categorized as "Other."

Over 82 percent of the Commissioner's Orders this year upheld a public body's decision. It is important to note that mediation plays a large role in this statistic. The Office's discussions with public bodies during the mediation process frequently result in public bodies releasing additional records or withdrawing the application of particular sections of the Act they have used to withhold records. Thus, if called upon to make an Order, the Commissioner generally is faced with resolving significantly narrowed issues and records. Without mediation, it is likely that Orders would contain more overturned or split decisions. It is also important to acknowledge that public bodies now have more experience in applying and complying with the Act than they did when it first became applicable to their records and operations from 1993 to 1995.

The disposition for Commissioner's Orders issued this year is set out in Figures 18 and 19, below. Figure 19, in particular, presents a visual perspective of the disposition of Commissioner's Orders by percentage.

Figure 18: Disposition of Commissioner's Orders Issued Between April 1, 1997 and March 31, 1998

Type of Decision	Number of Orders	Percentage
Decision Upheld	53	82.8
Decision Overturned	6	9.4
Split Decision	4	6.2
Other	1*	1.6
Total	**64**	**100.0**

** See Order No. 186-1997, where the Commissioner ordered the public body to consider severing the records and return them to him for review within a set time period. The outstanding issues of that Order were concluded in Order No. 186B-1997.*

Figure 19: Disposition of Commissioner's Orders Issued Between April 1, 1997 and March 31, 1998

Statistics of the Commissioner's Office as a Public Body

In addition to deciding disputes under the *Freedom of Information and Protection of Privacy Act*, the Commissioner's Office is also a public body under the Act. Like other public bodies, it is subject to the Act's principles and practices and is required to respond to requests for records or the correction of

personal information within its custody or control. The Commissioner's Office may also be the subject of a complaint under the Act.

The Act, however, does not provide applicants with access to the Office's operational records, since they are specifically excluded from the Act under section 3(1)(c). Section 3(1)(c) provides that the Act does not apply to "a record created by or in the custody of an officer of the Legislature and that relates to the exercise of that officer's function under an Act." The effect of this section is to protect the privacy of information submitted to, and collected by, the Office as a result of the requests for review and complaints it is called upon to mediate or adjudicate.

Where an applicant is not satisfied with the Office's response to his or her request for records or complaint, the applicant may request a review of the Commissioner's decision. This request must be made to the Minister responsible for the Act, currently the Minister of Advanced Education, Training and Technology. This is because the Commissioner cannot adjudicate his own decisions about the requests for records or complaints made to his Office. The Minister then designates a British Columbia Supreme Court judge to act as the independent adjudicator of the dispute. Adjudicators have essentially the same powers as the Information and Privacy Commissioner has as the final decision maker under the Act. Adjudicators will review a Commissioner's decision and the relevant submissions from the applicant, then issue a binding decision.

* Adjudication decisions are available on the Office's web site at: http://www.oipcbc.org.

A. Requests for Review

From April 1, 1997 to March 31, 1998, the Office received 24 requests for records and 2 requests for corrections to personal information. The total of 26 requests for records or corrections is a decrease from last year's total of 47, as illustrated by Figure 20 below.

Figure 20: Requests for Records and Correction to Personal Information Recieved by the Commissioner's Office in Comparison with Previous Fiscal Years

Figure 21, below, sets out the Commissioner's disposition of the 26 requests received this year. Of the 26 requests, applicants were satisfied with the Office's response in 21 of them. The Office's response to the remaining five requests were challenged by the applicants and thus referred to an adjudicator. These five cases concerned decisions by the Office to deny applicants access to records or to provide them with partial access only. In most of the cases, the Office refused to disclose records under section 3(1)(c) of the *Freedom of Information and Protection of Privacy Act*.

Figure 21: Commissioner's Disposition of Requests for Records or Correction of Personal Information

There were no decisions made by adjudicators on any of the requests for records made this year. There were, however, six decisions delivered by adjudicators on requests for records made during the previous fiscal year. The adjudicators upheld the Office's decisions in all six cases.

B. Complaints

There was one complaint against the Commissioner's Office this year that was referred to an adjudicator. The applicant alleged that the Office had inappropriately collected his or her personal information. A decision was released on this adjudication in March of 1998. The adjudicator concluded that she did not have jurisdiction to review the matter, but that, if she did, she would have found that the

Office had not inappropriately collected the applicant's personal information.

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VII. Commissioner's Orders

Introduction

Sections 56(1) and 58(1), (2), and (3) of the *Freedom of Information and Protection of Privacy Act* provide that the Commissioner must dispose of requests for review by Order if they cannot be settled by mediation. The Commissioner may make Orders on the right of access to records, time extensions, corrections to records, and fees. The Commissioner may also make Orders on the collection, use, and disclosure of personal information under the Act.

To make an Order, the Commissioner must first hold a formal inquiry during which he reviews the facts, issues, and records of a dispute. He considers all submissions carefully, then makes a decision. The Commissioner is the impartial adjudicator of the case and his decision is final and binding under the Act. If individuals involved in the case are dissatisfied with the Commissioner's decision and want to appeal it, they must take it to the Supreme Court of British Columbia and apply for judicial review.

* The Commissioner's Orders are available on the Office's web site at: http://www.oipc.bc.ca/orders_reports.htm

The Formal Inquiry Process

Inquiries are conducted by the Commissioner, who decides if they will be oral or written and who may make submissions. The Commissioner also decides all questions of fact and law arising during the inquiry. The Commissioner has 90 days within which to conclude the inquiry, although the first portion of the 90 days is normally allocated to Portfolio Officers for the purposes of mediation. After the Commissioner has concluded his inquiry, he makes the Order, which is released to the parties and becomes a public document. The Order may require a public body to withhold records, release records, or resolve issues concerning time extensions, corrections to records, or fees. It also may decide matters related to the collection, use, and disclosure of personal information. A public body must comply with the Commissioner's Orders within 30 days.

* A Chronological Table of Orders and a Table of Concordance Between the Orders and the Act is available on the Office's web site at: http://www.oipcbc.org.

Judicial Review

From April 1, 1997 to March 31, 1998, two of the Commissioner's Orders were the subject of applications for judicial review before the B.C. Supreme Court: Orders No. 126-1996 and 195-1997. The Court also delivered two decisions during this time on Orders that were under judicial review from previous fiscal years: Orders No. 39-1995 and 108-1996. The petition for Order No. 39 was dismissed and Order No. 108 was sent back to the Commissioner for reconsideration.

There are three Orders from previous fiscal years that are still before the Court but which have not yet been decided. Order No. 115-1996 has been heard, but no decision has been issued. Order No. 144-1997 is scheduled to be heard later in 1998. Order No. 48-1995 was upheld but is under appeal by the applicant to the B.C. Court of Appeal.

* Copies of judicial review decisions are available by contacting the B.C. Supreme Court registries in Vancouver at (604) 660-2845, or Victoria at (250) 356-1478, or by linking from the table of judicial reviews on the Commissioner's Office web

site to the corresponding B.C. Supreme Court decisions on the B.C. Superior Courts' web site at: http://www.courts.gov.bc ca.

Sample Summaries of Recent Orders

From April 1, 1997 to March 31, 1998, the Commissioner issued 64 Orders. Theses were Orders No. 158 to 220. (Order No. 186-1997 was followed by a second related Order: Order No. 186B-1997.) Some of the more recent Orders have been summarized and set out below in reverse chronological order. order.

Order No. 214-1998 - A refusal by the College of Massage Therapists of BC to disclose the mailing list of its members to the Independent Massage Therapists Society.

The Independent Massage Therapists Society requested a list of registered members from the College of Massage Therapists of BC for the purpose of establishing communications with College members. The College submitted that disclosure of its mailing list, which included both business and home addresses of its members, to the Society would be an unreasonable invasion of their members' personal privacy in the absence of each registrant's express consent.

The Commissioner concluded that since the list contained both business and home addresses that could not reasonably be separated, disclosure would be an unreasonable invasion of the College members' personal privacy under the *Freedom of Information and Protection of Privacy Act*.

Order No. 210-1998 - A request for review of a decision by BC Transit to disclose a record pertaining to a contract with Seaboard Advertising Company.

Gallop & Gallop Advertising Inc. requested information regarding the contractual agreement between BC Transit and Seaboard Advertising Company. After consultation with the third party, BC Transit decided to release the requested information. Seaboard Advertising objected on the grounds that the applicant is one of its major competitors in an intensely competitive business and that release of this information could reasonably be expected to harm their competitive position and result in undue financial loss.

The Commissioner concluded that BC Transit was correct in determining that it must disclose the contract under the *Freedom of Information and Protection of Privacy Act*, since Seaboard Advertising was unable to establish that it had supplied information to BC Transit in confidence, and thus failed to meet one of the key elements of the three-part harms test in the Act which prevents disclosure.

The test requires a third party, such as Seaboard Advertising, to prove that the information the applicant seeks is (i) commercial, financial, or trade secret information; (ii) has been supplied to the public body in confidence; and (iii) if disclosed, could reasonably be expected to significantly harm the third party's competitive position or result in undue financial loss or gain to anyone.

Order No. 208-1998 - A request for records in the custody or under the control of the Law Society of British Columbia.

An applicant, a member of the Law Society of British Columbia, requested records from the Law Society containing investigative and personal information connected to complaints brought against her by two individuals. She wanted one complainant's Annual Practice Declarations for the years 1992 and 1993, and other information pertaining to each of the two complaint files.

The Law Society released some documents to the applicant, but withheld or severed others on the

grounds that disclosure of the information would constitute an unreasonable invasion of the third party's personal privacy, particularly since the third party had not consented to disclosure.

The Commissioner found that the Law Society had properly withheld the records under the *Freedom of Information and Protection of Privacy Act*, confirming that some portions were protected by solicitor-client privilege and others could reasonably be expected to harm law enforcement and personal privacy if disclosed.

The Commissioner stated that: "I have had regard to the applicant's argument that disclosure of this information is relevant to a fair determination of her rights but that consideration is, in my view, outweighed in this case by the nature of the information and the third party's opposition to disclosure. [I]f the complaint to the Law Society results in disciplinary action, the applicant will have the right to know the case being made against her by the Law Society at that time."

Order No. 204-1997 - A decision by the University of Victoria to withhold from an applicant the audio tapes of an harassment hearing at which she was the respondent.

The applicant, a respondent to a harassment hearing, was one of three individuals accused by three UVic students belonging to the Lesbian, Gay, and Bisexual Alliance (LGBA). The allegations stemmed from a letter the complainants allege the applicant wrote and submitted to the campus newspaper, which the newspaper subsequently printed. At the hearing, the applicant denied having written or submitted the letter. She later made a freedom of information request for a copy of the hearing tapes.

The University refused access to the tapes, stating that disclosure could reasonably be expected to threaten the health or safety of hearing participants and would invade their personal privacy.

The Commissioner ordered the University of Victoria to release the audio tapes of the harassment hearing to the applicant, but with some information deleted on the grounds that they could reasonably be expected to threaten the health or safety of certain hearing participants, or unreasonably invade their personal privacy.

The Commissioner stated that: "While I am very pleased that UVic has harassment policies and procedures, it is my responsibility [in this case] to test them under the Act in terms of both their sensitivity to confidentiality and privacy but also to the interests of accountability to the public established by the [*Freedom of Information and Protection of Privacy*] Act."

Order No. 200-1997 - A decision by the Ministry for Children and Families to deny access to third-party personal information in an adoption file.

The applicant, an adoptee, requested the name of the birth father identified in her adoption record maintained by the Ministry for Children and Families. The Ministry responded that disclosure of the name of the person identified as the applicant's father would be an unreasonable invasion of his privacy.

The Commissioner found that disclosure of the name was not prohibited under the *Adoption Act* and neither was it an unreasonable invasion of personal privacy under the *Freedom of Information and Protection of Privacy Act*.

He concluded that: "Given that, in this case, the named individual was relatively young when he died, has likely been dead for forty-six years, there are no living siblings, the parents would be in their nineties (and therefore may not be alive), and the identity of former friends is unknown, I find that the prospects for unreasonable invasion of the privacy of the named father are extremely remote."

Order No. 194-1997 - A decision by the Workers' Compensation Board (WCB) to withhold personal information relating to an investigation.

In May of 1996, three WCB employees filed a personal harassment complaint with their union against a claims manager employed by a private forest company. Shortly after being informed of the personal harassment complaint, the claims manager left her employment and the union withdrew its complaint against her. She then requested all information about her from the WCB.

The WCB responded by giving her a summary of the harassment investigation notes, but withheld the names of the three complainants on grounds that the disclosure would be an unreasonable invasion of the third parties' personal privacy.

The former manager argued that disclosure of the complainants' names was "necessary to clear her name so that she might again choose to take up a position in claims management." She also requested that the Commissioner order the WCB to destroy records containing her personal information, stating that the complaint against her was "an act of malice and mischief."

The Commissioner found that the disclosure of complainants' names would not constitute an unreasonable invasion of their personal privacy under the *Freedom of Information and Protection of Privacy Act*.

He stated that: "Whatever the ultimate merits of the positions of the various parties on the larger issues that underlay this inquiry, it is difficult not to feel that the applicant should see the case against her, including the names of her accusers.... As I have indicated in previous Orders, I have a strong sense of the utility of leveling the playing fields in cases like this one by full disclosure of the records in dispute."

The Commissioner also found that the WCB was not required to destroy records about the former manager, stating that "it was entirely appropriate for the WCB to investigate matters that affect its employees and their workplace environment, including matters involving non-employees."

Order No. 189-1997 - A decision by the Ministry for Children and Families to annotate a record under section 89(1) of the *Child, Family and Community Service Act* rather than to correct it.

The applicant requested correction of a record held by the Ministry for Children and Families that alleges she was responsible for the death of her young child in 1963. The Ministry annotated the record with the applicant's version of events but refused to correct the information in the file, stating that it was "an accurate record of what a caller reported." The Ministry further stated that it is required to "record all information provided by a caller and then assess this information to determine if further action is needed," particularly when it receives reports of child protection issues.

The Commissioner acknowledged that the circumstances of the case were unfortunate and had caused "great concern to the applicant and her family," but concluded that the Ministry had acted appropriately under the *Child, Family and Community Service Act* and the *Freedom of Information and Protection of Privacy Act* by annotating instead of correcting the record. He stated that: "Although the applicant and her family wish to remove a record that is upsetting to them, the final determination on an appropriate course of action must lie with child protection officials in the Ministry."

Order No. 187-1997 - A request by Domaine Combret Ltd. to the Ministry of Agriculture, Fisheries and Food, for access to Treasury Board submissions concerning government assistance to the wine and grape industry.

An estate winery located in the Okanagan, had requested a copy of a submission concerning a wine and grape development fund designed to promote the BC wine industry. The Ministry of Agriculture, Fisheries and Food disclosed the 84-page submission, but severed information from 34 of the pages, arguing that it would reveal the substance of Cabinet deliberations. The Ministry also stated that disclosure would reveal policy advice, and would harm intergovernmental relations, the government's financial interests, and the business interests of another estate winery.

The Commissioner found that the Ministry had demonstrated a reasonable expectation of harm, to both the government and the winery, should the information be released. The Commissioner agreed with the Ministry that "the very purpose of the treasury board submission was to present Treasury Board with options on how to manage this very important sector of the economy," and that disclosure of the information could have a widespread effect on the BC grape and wine industry.

Order No. 161-1997 - The Ministry of Attorney General's decision to sever information from records related to an employee's travel expenses.

An applicant requested access to records relating to the travel expenses of a lawyer employed by the Legal Services Branch of the Ministry of Attorney General. The lawyer had acted on behalf of the government in two court actions brought against it by the applicant, which were subsequently dismissed, one with costs against the applicant. The applicant wanted the records to scrutinize the Ministry, claiming that it had billed him for expenses which contradicted the facts.

Specifically, the applicant wanted records containing the lawyer's credit card type, number and expiry date; her driver's licence number and details; her home address and telephone number; and information that would identify the name and location of hotels where she had stayed.

The Ministry released portions of the records to the applicant, but withheld others, stating that the applicant had a history of targeting government employees with whom he had had disputes, and that disclosure could reasonably be expected to threaten the safety of the lawyer and would be an unreasonable invasion of her personal privacy.

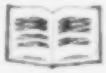
The Commissioner found that the Ministry had produced sufficient evidence to justify withholding the lawyer's travel information on grounds that disclosure could reasonably be expected to harm her physical safety. He also agreed that disclosure would be an unreasonable invasion of her personal privacy, since employees submitting travel vouchers to employers have a reasonable expectation that the personal information included will be held in confidence and used only for the purposes for which it was submitted.

Order No. 159-1997 - A decision of the Insurance Corporation of British Columbia to sever and withhold from the Trial Lawyers Association of British Columbia records that relate to proposed or draft "no-fault" automobile insurance in British Columbia.

In April of 1996, the Trial Lawyers Association of British Columbia requested records from ICBC concerning the proposed or draft "no-fault" automobile insurance plan. It requested the records as a matter of public interest. The records consisted of approximately 1,935 pages of ICBC reports, meeting minutes, and e-mails about "no-fault" automobile insurance, including memoranda relating to the Association's request. ICBC refused to release the records, stating that disclosure would reveal sensitive policy and legal advice, and would harm ICBC's financial or economic interests.

The Commissioner found that ICBC had acted appropriately in withholding portions of the records which would reveal policy and legal advice. He also found that ICBC had correctly withheld the remaining records under a reasonable expectation of harm to its financial or economic interests.

The Commissioner stated that: "I have reviewed every page of the records in dispute and am satisfied that ICBC has appropriately applied the relevant sections of the Act. I accept the basic fact that ICBC has the right to operate in a zone of confidentiality as it develops its information, choices, recommendations, and actuarial data for its insurance products."

Back to Previous Section Forward to Next Section Back to Table of Contents 

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VIII. Section 43 Authorizations

Introduction

Section 43 of the *Freedom of Information and Protection of Privacy Act* allows the Commissioner to authorize a public body to disregard requests for records that are "repetitious or systematic" in nature, and which "would unreasonably interfere with the operations of the public body." The purpose of section 43 is to prevent irresponsible use of the Act by applicants.

This year, the Commissioner's Office received nine section 43 requests from public bodies. The Commissioner approved five of the requests; one was withdrawn by the public body; and three await the Commissioner's final determination.

* Section 43 authorizations are available on the Office's web site at: http://www.opicbc.org.

The Section 43 Authorization Process

The Office processes a public body's section 43 request in similar fashion to a request for review. The Office's Intake Officers review the authorization request and assign it to a Portfolio Officer, who tries to assist the parties to reach a mediated solution. If mediation fails, the request will proceed to a formal inquiry before the Commissioner. During the inquiry, the public body is required to provide evidence to substantiate its claim that the applicant is unreasonably interfering with the public body's operations by making repetitious or systematic requests. The Commissioner reviews the arguments and issues a binding decision either confirming or denying the request.

The specific terms of a section 43 authorization vary according to the nature of the public body's request and the Commissioner's determination of the facts. Normally, however, a section 43 authorization will bar the applicant from requesting records from the public body for a specified period of time, such as six months to one year.

Sample Section 43 Authorization

A sample section 43 authorization is set out below in its original text, except for the applicant/respondent's identifying information, which has been severed to protect his or her privacy.

Section 43 Authorization

October 16, 1997

Re the Ministry of Human Resources

In the Case of an Application by the Ministry of Human Resources for Authorization to Disregard Requests from [the respondent] under Section 43 of the *Freedom of Information and Protection of Privacy Act* (the Act)

I have had the opportunity of reviewing the application of the Ministry of Human Resources under section 43 of the *Freedom of Information and Protection of Privacy Act* (the Act) for authorization to disregard requests made by [the respondent] under section 5 of the Act.

Section 43 gives me the power to authorize a public body to disregard requests under section 5 that, because of their repetitious or systematic nature, would unreasonably interfere with the operations of the public body, in this case the Ministry of Human Resources.

Since the purpose of the Act is to make government bodies more accountable to the public by giving the public a right of access to records, authorization to disregard requests must be done sparingly and only in obviously meritorious cases. Granting section 43 requests should be the exception to the rule and not a routine option for public bodies to avoid their obligations under the legislation.

Based on a detailed review of the submissions of the Ministry of Human Resources and the response of the respondent, the following factors have led me to decide that [the respondent]'s access requests are repetitious, systematic, and unreasonably interfere with the operations of the Ministry:

1. The Ministry states that [the respondent] is its [client]. Since 1994 the Ministry, and its predecessor, the Ministry of Social Services, has received a total of 23 requests from [the respondent]: "The number can be said to be higher because the Public Body often treats as single requests faxed from [the respondent] that really contain more than one distinct request." (Submission of the Ministry, paragraph 3.02) This number of requests from one individual is "high" from one individual. (Submission of the Ministry, paragraph 3.07) Most of these requests ask for personal information about [the respondent] in all parts of the Ministry. (Submission of the Ministry, paragraphs 3.03, 3.04) The Ministry describes [the respondent]'s methods of communicating with it about [his/her] requests is to apply a "pattern of bombardment by correspondence to almost every request [he/she] makes. In short, [the respondent] has an enormous capacity for creating paper and flooding the Public Body with it." (Submission of the Ministry, paragraph 3.05)

2. The Ministry submitted the reasons for decision [in a court matter] involving [the respondent], which reviews some of the history and nature of [his/her] relationship with the Ministry (and its predecessor, the Ministry of Social Services). In particular, the [court] commented on [the respondent]'s tendency and capacity, by piling proceeding upon proceeding, to create confusion, as well as waste of time and resources, all of which must be met from the hard pressed public purse. (Submission of the Ministry, paragraph 2.02)

3. The Information and Privacy Office of the Ministry estimates on the basis of "good records" that it has spent at least 123 hours responding to only the last eight requests of [the respondent]. (Submission of the Ministry, paragraph 3.08) The coordinator who has handled these specific requests estimates that "due to the volume and confusing nature of the requests and associated correspondence, it takes him approximately 3 times as long to process a request from [the respondent] as it does to process requests from other applicants." (Submission of the Ministry, paragraph 3.13) Other staff outside this Office also "spend a considerable amount of time" dealing with these requests. (Submission of the Ministry, paragraph 3.09) In terms of measuring and evaluating the significance of this time commitment, the Ministry relies on my discussion in Order 110-1996, June 5, 1996, p. 5. (Submission of the Ministry, pp. 3, 12)

I agree with the submission of the Ministry that [the respondent] has made, and continues to make, "unreasonable" demands on staff of the Ministry to process [his/her] repetitious and systematic access requests. (Submission of the Ministry, paragraph 3.13)

4. Based on my decision in Order No. 110-1996, I also agree with the submission of the Ministry that "[the respondent] is not using the Act for the purpose for which it was intended, and is not using the Act in good faith. [The respondent] is using the Act as a weapon against the Public Body because [he/she] is unhappy with the Public Body's decisions about [his/her] entitlement to [records]. The demands placed on the Public Body by [the respondent] are excessive. The Public Body's efforts to help [the respondent] have been excessive in light of its responsibilities to other clients and the taxpayers." (Submission of the

Ministry, paragraphs 3.14, 3.17) (See also Order No. 137-1996, December 17, 1996, p. 10.)

5. I also agree with the Ministry that it is unfair for it to devote so much time and effort to responding to a single applicant under the Act. This unreasonably interferes with the operations of the Ministry and is unfair to other applicants and the taxpayers. I further agree that "to require the Public Body to continue to incur the costs of responding to [the respondent]'s requests would offend public policy, particularly in these times of fiscal restraint, and would bring the Act into disrepute." (Submission to the Ministry, paragraph 3.17)

Therefore, I authorize the Ministry to disregard all requests from [the respondent], in particular the following:

1. all requests that were outstanding at July 23, 1997;

2. all requests received between July 23, 1997 and September 12, 1997;

3. all future requests that may be received between September 12, 1997 and the date of issuance of this authorization; and

4. all future requests for a period of two years from the date of issuance of this authorization.

October 16, 1997

David H. Flaherty

Commissioner

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IX. Investigation Reports

Introduction

Sections 42(1), 42(2), and 44 of the *Freedom of Information and Protection of Privacy Act* authorize the Commissioner to conduct investigations on a variety of matters concerning the access to information and protection of privacy practices of public bodies under the Act. Investigations may originate from complaints, but may also be undertaken where the Commissioner perceives there are significant or systemic information or privacy issues of public concern. The purpose of an investigation is to ensure that a public body's policies and practices are in compliance with the *Freedom of Information and Protection of Privacy Act*, and to offer it guidance in achieving that compliance.

* Investigation Reports are available on the Office's web site at: http://www.oipcbc.org

Summaries of Recent Investigation Reports

Investigation Reports that were concluded this year have been summarized and set out below in reverse chronological order.

Investigation P98-012: A Discussion of Video Surveillance by Public Bodies (March 31, 1998)

As a result of conducting site visits of certain public bodies in British Columbia, the Commissioner's Office learned that an increasing number of them, including libraries, Crown corporations, correctional institutions, police departments, and hospitals, were employing video surveillance technology as a means to fulfill particular operational or policy goals. The Office decided to investigate this issue in more detail to determine the implications and impact of video surveillance technology on the privacy of employees and clients, and to examine its use globally as a tool for dealing with particular social problems.

The report features two cases studies on the use of video surveillance by public bodies in British Columbia and concludes by offering guidelines on how to develop fair information practices for video surveillance systems. These guidelines discuss the need for written policy on the use of video surveillance within a public body; the appropriate location of cameras and times of operation; the security and retention of videotapes; public awareness of video surveillance cameras; audits; and the use of and access to personal information captured on videotape.

One of the key issues in privacy protection is the prevention of unnecessary surveillance of individuals by regulating the collection of personal information. The Office found that the trend is to use video surveillance as a "cure-all" in the interests of public safety and crime prevention. The Office recommends that public bodies must balance such interests against the right of the individual to be left alone. It asserts that the danger lies in the tendency of individuals and organizations to consider video surveillance technology as an ideal solution. The Commissioner's Office conducted the investigation with the belief that video surveillance itself is neither inherently bad nor good, but rather that there is both good and bad uses for it. As video surveillance technology becomes more accessible and pervasive, the need for guidance for all public bodies on this issue becomes more pressing.

Investigation P98-011: An Investigation Concerning the Disclosure of Personal Information through Public Property Registries (March 31, 1998)

In September of 1996, the Commissioner's Office received a number of complaints from citizens concerned about the privacy implications of the City of Victoria's property assessment database. This database was searchable by owner's name, address and Roll number, and had been made availableto the public on the Internet through the City's web site.

In response to these concerns, the City removed the names of homeowners from the web site until the privacy issues could be investigated more thoroughly. The Commissioner's Office undertook to conduct an investigation, which focused on the privacy issues surrounding the publication of personal information in property databases. It examined the wider assessment system and most specifically, the BC Assessment Authority (BC Assessment), which has the lead role in the property assessment system in British Columbia. The report concluded with four major recommendations:

• that property registries, such as the Assessment Roll, should be searchable by property address only. This practice would prevent the Assessment Roll from being used as a locational device and protect, to a certain extent, those vulnerable people who have an interest in suppressing information which would reveal their home address;

• that those public bodies that make property information available clearly state the legitimate purposes for which property registries may be inspected, and discourage any other use of those registries;

• that in the case of bulk sales of property registry data, whether in electronic, microfiche or hard copy format, the name of property owners should be suppressed; and

• that provisions should be made to suppress personal information in cases where individuals can reasonably demonstrate that disclosure of their personal information would jeopardize their safety, or that of their family.

The report noted that there is a widely-held assumption that information in such "public" registries need not be protected at all, or that it requires only very limited protections. The report points out, however, that information that is "public" is vulnerable to misuse, particularly when the information is provided to others in an electronic format. The report also notes that one of the goals of the *Freedom of Information and Protection of Privacy Act* is to limit the collection, use, and disclosure of personal information by public bodies. In short, it presumes that personal information will be collected and used by public bodies for a specific purpose, and disclosed only in limited circumstances, as permitted by law.

The report acknowledges that obvious benefits accrue to society through the availability of public databases such as the Assessment Roll, the Corporate Registry, and Land Title Registry. In fact, volumes of business transactions depend on the quick availability of such information. Furthermore, the availability of records, including other sorts of records, such as court records, promotes greater accountability of public bodies and serves an educative function. The report concludes, however, that the central issue concerning privacy and public records is the attempt to strike an appropriate balance between providing personal information that is necessary and useful to realize a public policy goal, while at the same time protecting the privacy of individuals as much as possible.

Investigation P97-010: Report on an Investigation by the Office of the Information and Privacy Commissioner into a Complaint Regarding a Disclosure of Personal Information by the Vancouver Police Department (June 16, 1997)

This investigation originated from a privacy complaint by a woman who alleged that the Vancouver

Police Department had violated her privacy by disclosing details of her 911 calls to police to her landlord in response to his freedom of information request.

After investigating the circumstances of the complaint, the Office concluded that the Vancouver Police Department had disclosed the complainant's personal information, and that the disclosure constituted an unreasonable invasion of the complainant's personal privacy under the *Freedom of Information and Protection of Privacy Act*. The Office also concluded that Vancouver Police should have notified the woman that it intended to disclose records containing her personal information in order to give her the opportunity to request a review of that decision by the Commissioner's Office.

The report sets out that the landlord had requested a list of incidents involving police at the address of his tenant, whom he named in his request. The Vancouver Police Department disclosed six printouts of Computer Aided Dispatch (CAD) calls to him from which the complainant's name was removed. The records contained, however, details of the incidents themselves, including numerous references to the woman's suicidal tendencies and behaviour.

The report makes two major recommendations which the Vancouver Police Department has accepted and agreed to work on with the Commissioner's Office. These recommendations state that the Vancouver Police Department should:

• revise its policies and procedures for the treatment of Freedom of Information requests for personal information of named third parties, in order to ensure the appropriate application of section 22; and

• notify third parties under sections 23 and 24 of the Act, where police intend to disclose records that contain personal information about those third parties which might be excepted from disclosure under section 22 of the Act.

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X. Site Visits

Introduction

Section 42(1)(a) of the *Freedom of Information and Protection of Privacy Act* authorizes the Commissioner to conduct audits or investigations of those public bodies under his jurisdiction to ensure their compliance with the provisions of the Act. Inspired by the German federal and state models of auditing data protection practices in the public sector, the Commissioner is convinced that auditing for compliance is essential to successful data protection and fulfills his auditing mandate, in part, by conducting "site visits."

Site visits are a less formal form of audit and typically focus on Part 3 of the Act, which sets out the rules and guidelines for public bodies on how to collect, use, and disclose personal information. These guidelines are often referred to as "fair information practices." The primary goal of a site visit is to raise consciousness about information and privacy rights and the obligations of public bodies under the Act. The Commissioner also uses it as an opportunity to learn more about the practices of particular public bodies, especially those in more remote communities, and to respond to the questions and concerns they might have about the Act.

Site visits also provide the Commissioner with information about general freedom of information problems, such as the impact of the Act on the relationship between local police and health authorities. Finally, the Commissioner sees site visits as an opportunity to put a human face on the legislation and to offer guidance and support to public bodies for its proper implementation.

The Site Visit Process

A. Selection of a Public Body

The Commissioner often focuses on "privacy intensive" public bodies, such as hospitals, social services and municipal police forces. He also visits central government bodies, Crown corporations, and municipal offices. Public bodies themselves sometimes invite the Commissioner to visit them because they want help. Office staff may also suggest site visit opportunities where, on the basis of their advice-giving activities and investigation of complaints, they suspect problems with applying the legislation. Site visits are also organized around invitations to the Commissioner to speak to various organizations throughout the province.

B. Advance Notice

Generally speaking, the Commissioner conducts site visits informally. The Office normally contacts a public body in advance through its designated information and privacy coordinator, and makes an appointment to visit. The specific itinerary is arranged to fulfill three primary goals:

(i) to meet the head of the public body (the deputy minister, the mayor, the Chief Executive Officer or equivalent) and key records or information management staff;

(ii) to examine how the public body collects, uses, discloses, secures, and disposes of the personal information in its custody or control; and

(iii) to identify and discuss any immediate concerns about the privacy, security, and accessibility of records held by the public body.

The Office discusses site visit expectations with the information and privacy coordinator and provides additional relevant information necessary, including sending information packages or referring the public body to information on the Commissioner's Office web site at: http://www.oipcbc.org. Such information includes the Office's contact information; a list or set of Commissioner's Orders relevant to particular types of public bodies, such as municipalities or hospitals; guidelines on fax and e-mail security; and copies of relevant speeches and presentations. The Office also discusses a draft agenda for the visit, identifying particular departments or officials it would like to include on the tour.

C. Site Visit Format

The Commissioner is often accompanied by a Portfolio Officer during a site visit, except in the more remote areas of the province due to cost considerations. Normally, site visits take one hour for relatively small public bodies, such as municipalities or police departments; two hours for mid-sized public bodies, such as small hospitals or Ministry branches and departments; and up to five hours or more for larger, more complex public bodies, such as suburban hospitals.

A typical site visit normally begins with an introductory "get acquainted" meeting between the Commissioner and the head of the public body, and perhaps some key staff. This portion of the visit focuses on allaying any anxieties the public body may have about the purposes or conduct of the site visit, and allows for initial discussion of any problems the public body may be having with the Act. Frequently, the meeting leads to a discussion of the relative costs of administering freedom of information for public bodies, as well as answering questions about other public bodies' experiences with the Act. Many public bodies have had only a small number of formal requests for information under the Act and not much experience with FOI or protection of privacy processes. The Commissioner's goal in addressing these questions and issues is to make the site visit a useful and positive experience for the public body, and not simply an inspection.

D. The Tour

The Commissioner then proceeds on a tour of the public body's facilities, in particular its manual and computerized records offices and systems. He is interested in viewing and reviewing the public body's records management and security practices, and in meeting staff. The Commissioner encourages senior staff members of the public body to accompany him on the tour, so that they may take a proactive role within the facility for compliance with the Act, in particular, the appropriate protection of personal privacy.

On the tour, the Commissioner often stops to talk with various staff members of the public body and questions them about their role and knowledge of information and privacy legislation. The Commissioner focuses his attention, however, on familiarizing himself with the public body's information-handling processes and its records areas, particularly those relating to health, personnel, and human resources. He rarely inspects individual files, but rather inquires about how a public body collects, uses, and discloses the information in their files. He also is interested in reviewing and collecting copies of the public body's policies on confidentiality and security of information, and may want to inspect any forms it uses to collect personal data. He encourages public bodies to have specific policies in place and to post signs advising clients and staff about data collection, and the principles and practices of the Act, including public body obligations. He also advises the posting of notices about the presence of video surveillance systems, if any are in operation at the facility.

The Commissioner is also interested in the physical security of records at the facility, such as whether

there are locks on doors and filing cabinets containing personal information, and how and when they are used. He may ask about audit trails and the requirement of changing passwords for automated information systems. He may ask about registries of patient or client personal information. He may look for signs and half-doors to control admittance by unauthorized users to record rooms. Further, he may review the actual placement of files within the office's general design. The Commissioner pays particular attention to records containing harassment, grievance, arbitration, and disability information, which affect both employees of a public body and its clients. He encourages filing records numerically under a records management system, rather than by an alphabetical listing of employees' or clients' names.

Finally, the Commissioner may ask about space rented to outside bodies, the role of contractors, and the presence of any after-hours cleaners or service people at the public body. He may inquire if students fulfill practicums at the public body or participate in job-shadowing programs. The focus of these questions is confidentiality and confidentiality agreements. The Commissioner may also promote particular improvements to a public body's facilities, such as changes in forms or in nursing stations and admission offices for hospitals, and encourage practical, cost-effective solutions to prominent privacy problems. Some of these solutions are as simple as the privacy problem itself, such as closing medical charts that are left unattended on medication carts in hospital hallways.

The Commissioner normally concludes a site visit by asking public bodies how individuals are given access to their personal records under the Act. The Office promotes routine disclosure of records wherever feasible to reduce the need for applicants to make formal access requests under the Act. The Commissioner also emphasizes the need for public bodies to control access to personal records by their clients, customers, and staff.

E. Follow-Up

The Commissioner or Portfolio Officer often takes notes during a site visit. These notes reflect matters of concern for the Office, on which it may follow up with senior management either at the conclusion of the site visit or by reporting letter shortly thereafter. Normally, such a letter identifies the particular problems or concerns and recommends policy or practice changes necessary to bring the public body into compliance with the Act. The Commissioner also may assign a Portfolio Officer to work with the public body to achieve a satisfactory solution. If a problem is particularly sensitive or urgent, the Commissioner or his staff may conduct a second site visit a few months later with a view to ensuring compliance.

* The Commissioner conducted an extensive site visit to the BC Cancer Agency in January of 1997, from which he produced the Office's first, and so far only, formal site visit report. The report was prepared as a presentation to the annual meeting of the North American Association of Central Cancer Registries in Boston, Massachusetts on April 1, 1997. The report is a useful guide for all public bodies on the process and import of site visits and the protection of privacy. It is summarized in Chapter XI of this report in the section entitled "Recent Matters for Advice," and is available in its entirety on the Office's web site at http://www.oipcbc.org.

F. Conclusion

Site visits have proven to be one of the most effective and immediate approaches to raising a public body's awareness of its legislated obligation to handle records in accordance with the principles and practices of the *Freedom of Information and Protection of Privacy Act*. This is especially important for public bodies that collect and store highly sensitive and potentially stigmatizing personal information.

Recent Site Visits to Particular Public Bodies

The Office conducted over 60 site visits to public bodies this year, most of which are listed below

according to type of public body. Please note that some public bodies may have undergone name and/or organizational changes since the conclusion of the site visit.

Hospitals: Royal Jubilee Hospital; BC Children's Hospital; BC Women's Hospital; Vancouver Hospital and Health Sciences Centre; Cowichan Health Society; St. John Hospital; G.R. Baker Memorial Hospital; Stuart Lake Hospital; Bulkley Valley District Hospital; Lakes District Hospital and Health Centre; Wrinch Memorial Hospital; Mills Memorial Hospital; Kitimat General Hospital; Skeena Health Unit; Prince Rupert Regional Hospital; Castlegar District Hospital; Queen Charlotte Islands General Hospital; East Kootenay Community Health Services Society; Kimberley & District Hospital; Cranbrook Regional Hospital; Creston Valley Hospital; Trail Regional Hospital; and Kootenay Lake District Hospital.

Municipalities: Cowichan Valley Regional District; City of Duncan; District of Vanderhoof; District of Fort St. James; City of Quesnel; Village of Burns Lake; Village of Hazelton; Town of Smithers; District of Kitimat; City of Terrace; City of Prince Rupert; Village of Masset; Village of Port Clements; City of Cranbrook; City of Kimberley; Town of Creston; City of Trail; City of Nelson; and City of Castlegar.

Municipal Police: Port Moody Police Department; Victoria Police Department; and Nelson Police Department.

Ministries, Agencies, Boards, and Crown Corporations: Ministry of Attorney General - Information Technology Services Division and the Liquor Distribution Branch; BC Hydro; Ministry for Children and Families - East Vancouver, Nelson/Kaslo, Prince Rupert/Charlottes, and Trail District Offices; Ministry of Employment and Investment - British Columbia Information Management Services (Records Storage Facilities); Ministry of Finance and Corporate Relations - Public Service Employee Relations Commission (PSERC); and Workers Compensation Board - South Okanagan/Kootenay Regional Office.

Special Audit by the Office of the Auditor General of British Columbia

The Office was assisted in its audit and investigation mandate this year by the Office of the Auditor General of British Columbia. In July of 1997, the Auditor General concluded his detailed audit of the practices of the Ministry of Health with respect to its collection of personal information under sections 26 and 27 of the *Freedom of Information and Protection of Privacy Act*. Sections 26 and 27 set out how and when a public body may collect personal information from individuals. The Auditor General's findings were published in a report entitled: "Privacy - Collection of Personal Information by the Ministry of Health," which appeared in the Auditor General's tenth report to the Legislative Assembly for 1996/97.

The audit involved many hours of detailed analysis by the Auditor General's specially-trained staff, including travel to several communities around the province to review the data collection forms and practices of various regional and provincial government offices delivering a wide variety of ministry programs across British Columbia. The Commissioner's Office discussed the scope of the work with the Auditor General's Office and provided advice on the interpretation and application of the relevant sections of the Act. The Commissioner's Office has benefitted greatly from observing the Auditor General's expert auditing practices and techniques, and acknowledges the important benefits accruing to the public as a result of the Auditor General's detailed analysis of the Ministry's information collection practices.

Briefly speaking, the report reassures the public that the Ministry of Health is acting appropriately in its collection of personal information from individuals and public bodies under its statutory authority or need to do so for its operating programs. The report also concludes, however, that the Ministry was not always obtaining proper consent when collecting personal information from third parties, nor was it advising individuals why, and under what authority, information about them was collected, nor was it

giving them proper contact information about where they could inquire about the collection. These are practices required by section 26 and 27 of the *Freedom of Information and Protection of Privacy Act.*

The Commissioner's Office thanks the Auditor General and his staff for their in-depth analysis of the Ministry's information collection practices under sections 26 and 27 of the Act, and invites those wanting further information about the report, including a copy of it, to contact the Office of the Auditor General directly at: (250) 387-6803, or to visit its web site at: http://www.oag.bc.ca.

Commissioner's Site Visit Checklist for Hospitals

Entrance:

• If video surveillance is used in the entrance, or anywhere else in the hospital, notification of the existence of the cameras is required. Notification should include how and why surveillance is taking place, and provide a contact name and phone number for anyone interested in learning more about the hospital policy on video surveillance.

• If the video surveillance includes taping, is there a policy on use, retention and disposal or recycling of the tapes and does it comply with Part 3 of the Act?

• Notices regarding what information is collected and why should also be placed at the entrance to the hospital and anywhere information is collected. Notification of patients' rights to privacy under the *Freedom of Information and Protection of Privacy Act* should also be placed anywhere information is collected.

Admissions:

• Ensure confidentiality in gathering of personal information

• If collection of information is done verbally, have private area/room set aside to ensure privacy of patients

• Have notification forms detailing how/when information is to be used. Notification for the collection of personal information should include the purpose and authority for the collection as well as a name, business title and business phone number of a hospital employee who can be contacted to answer questions about the collection.

• Does the facility ask for the patient's consent for the collection of information for fund-raising or chaplain contact?

• Are patients informed of their right to refuse notification to callers/visitors of their presence or condition during their stay in the hospital? If the patient does not want callers notified, is an easily identifiable alert placed on the hospital admission and discharge information system?

• Are reception and ward staff advised to "neither confirm nor deny" whether a person is a patient at the hospital, if that person has refused permission for notification of their presence?

• Does the hospital policy address situations where the patient is unable to inform the hospital about whether callers can be notified?

• Are consent forms easy to understand? Are patients given a copy of what they sign?

• Is personal information used to conduct client satisfaction surveys for the purpose of improving health services? If so, does the admission form notify patients of this use?

Staff:

• Is there a specific individual who has responsibility for access and privacy issues?

• Do staff take a confidentiality oath? Are staff taught what the oath means and what would happen if it was breached?

• Are staff who handle records aware of the *Freedom of Information and Protection of Privacy Act*, its requirements and its implications?

• Has staff training occurred on the protection of privacy? Is there any provision for ongoing educational or training programs to keep staff appropriately informed about the best practices for privacy and data protection?

• Are volunteers and students aware of confidentiality and privacy issues?

• Do volunteers and students sign any formal agreement which indicates they are subject to the terms and conditions of the Act?

Medical Records:

• Ensure that medical records are protected with reasonable security measures. Are the physical security arrangements adequate to protect the documents stored by the hospital? Are the security measures appropriate to the sensitivity of the information collected?

• Records should be stored properly in secure fashion, i.e. in locked filing cabinets or locked rooms with restricted access

• Who has access to the physical record storage areas? How is access tracked and recorded?

• Is staff access to information only on a need-to-know basis? Are there controlled levels of access?

• Labelling patient records with names should be eliminated where possible in favour of a numbered filing system. If this is not feasible, place patient names on folders in such a manner that they are not easily discernible (i.e., in middle versus top of folder).

• Implement an audit trail to monitor access to individual, manual patient records and other personal documents

• Facsimile machines should be placed well away from the public and from cabinets/rooms containing patient records

• Where are the old files stored? Is there adequate physical security?

• Are the files culled or purged before going into storage? Is there a policy on the destruction of files after the completion of the retention period?

• Is there a policy for disposing of records in a secure manner, appropriate to the medium?

• Are the transcription services done in hospital and are these staff trained in the area of privacy and confidentiality?

• How are manual patient files transported to/from wards? Are the files secure during transit?

• Do any outside bodies come into contact with personal information held by the hospital? If so, does the contact with the outside body specify that that body will be subject to the terms and conditions of the FOIPPA?

• Does the hospital's contract for record disposal contain security measures commensurate with the FOIPPA?

Doctors' Lounges / Nurses' Stations:

• Ensure fax machines are away from the public and secure, so as to eliminate unauthorized use and to deter unauthorized viewing of incoming and outgoing faxes

• Remove all visible, identifiable patient records or ensure they are adequately secured

• Remove from public view any white or blackboards, etc. containing personal information

• Secure dictation/updating rooms

• Control transfer of discharge summaries to ensure they are not misplaced or accessible by unauthorized persons

Wards:

• Limit medical instructions left at bedsides to avoid unauthorized access to personal information

• Where feasible, remove names from doors to enhance patient privacy. Extended care facilities can retain the names on doors as this is considered the residence of the patient

• Remove any personally identifiable information or medical instructions from doors of patient rooms

• Patient appointment books and computer screens with sensitive information should be secured from unauthorized access

• Are patient lists visible to the public, particularly in out-patient clinics?

• Are medication and lab requisitions situated in open carts with personal information that can be easily read by a passing individual?

• Are there practicum students on the ward who access patient files? What training do they have in privacy and confidentiality?

• What records are placed in the recycling box and in the shredding box?

• Who is responsible for disposal?

• Is any patient information (including name) provided to the outside, non-health care agencies (such as TV rental companies)?

• How detailed is the information on the white boards on the ward and how visible is that information to the public?

Computer System Security:

• Are there documented procedures for collecting, processing, accessing, transmitting, storing and disposing of personal information?

• Are there rules of conduct for staff who access personal information and are staff trained?

• Do controls exist over authorization to add, change and delete personal information on the system?

• Can it be determined when personal information on the system was last updated and who updated it?

• Is user access and the assignment of security authorizations controlled by the hospital's systems security manager?

• Is access to personal patient information limited only to staff who require access to the information for the purposes for which the information was collected or for a consistent purpose?

• Is staff access to personal information on a "need to know" basis? That is, is access limited only to the specific portions of a patient's personal information required to provide immediate health care?

• Is an audit trail in place? Is there both human and electronic monitoring to ensure appropriate staff access to personal information ?

• Can the auditors be audited?

• What technological software is used by the public body to audit access to personal information? Can it be engineered to provide easily accessible electronic records or access to the database?

• Computer systems should be password accessible and each operator should have a separate password in order to eliminate 'anonymous' users. Has generic identification for access to terminals been eliminated to ensure against access by an otherwise "anonymous" user?

• Are passwords continually updated (i.e., every 6 months) with the requirement that individuals cannot repeat the same password?

• Does the system use dedicated lines or encryption for transmission of personal information?

General Considerations:

• If doctors have offices in the hospital, ensure any patient records, indicated charts, etc., stored within the offices are properly secured in either locked drawers or cabinets.

• Pharmacies, x-ray departments, labs, physiotherapy departments, etc., should follow the same guidelines noted above to ensure patient confidentiality and privacy.

• Are x-rays on viewing screens in areas visible to the public?

• Review hospital policies on patient access to information; privacy and confidentiality; secure transmission of personal information by fax; and disclosure of personal information to police.

• Hospital employee records should be stored separately from patient records in locked rooms or filing cabinets. Access to these records should be limited to authorized personnel only.

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XI. Providing Advice

Introduction

Sections 42(1)(f), (g), and (h) of the *Freedom of Information and Protection of Privacy Act* authorize the Commissioner to comment on the access to information or protection of privacy implications of (i) proposed legislative schemes or programs; (ii) automated systems for the collection, storage, analysis, or transfer of information; and (iii) the use or disclosure of personal information for record linkage. The Office normally fulfills this advisory role by consulting directly with public bodies, although it may engage in public discussion of a particular matter if it appears to affect significantly the information and privacy rights of British Columbians.

Recent Matters for Advice

A. BC Benefits Consent Form

In early 1998, the Office received a request from the Ministry of Human Resources for advice in redrafting the consent form that applicants for benefits must complete in order to receive income assistance under three pieces of the BC Benefits legislation. The Ministry had been using the form with new applicants since April of 1997, but was receiving negative feedback from existing benefits recipients, who were sent the form for signature in January of 1998. Recipients, advocacy groups, and the Commissioner were concerned about the wording of the consent form, which was confusing and led recipients to misunderstand some of the data procedures and sources being used by the Ministry. There was also a sense by many individuals that the Ministry's powers of verification were too extensive and thus privacy invasive. The BC Benefits legislation, however, provides the Ministry with the authority to collect information for verification purposes, and thus it was not a matter reviewable by the Commissioner's Office.

As requested, the Office provided the Ministry with privacy advice on the wording of the consent form. It reviewed sample drafts of the form over a period of several weeks and is satisfied with the final version of the form, as well as a question and answer pamphlet designed to address anticipated questions about income verification policies and practices. The Office considers the new form and its accompanying informational materials to be a model of transparency with respect to privacy considerations. In short, the new BC Benefits consent form now thoroughly alerts applicants to the ways and means by which the Ministry may conduct its verification process, and its authority and goals in doing so.

B. Potential Contracting-Out of Government Computer Services

One of the Office's major consultations this year was with three public bodies, BC Online, the Information, Science and Technology Agency (ISTA), and the Purchasing Commission, concerning the Requests for Qualifications (RFQs) and Requests for Proposals (RFPs) for the proposal to contract out some of the government's computer services. The Office provided extensive advice to these three bodies on the wording of the privacy and security portions of the RFQs and RFPs to ensure that, if the government does contract out computer services, the personal and non-personal information it currently maintains in the public interest remains within its control, has proper security safeguards, and is still accessible under the *Freedom of Information and Protection of Privacy Act*.

C. Privacy Code for Physicians in their Private Offices

The *Freedom of Information and Protection of Privacy Act* protects the privacy of personal information in records maintained by hospitals, mental health centres, health units, and student/employee health centres located in provincial or local government offices and post-secondary institutions. It does not, however, protect the privacy of medical records in the possession of individual physicians.

The Commissioner's Office worked with the College of Physicians and Surgeons of British Columbia and the B.C. Medical Association to develop a privacy code that would protect the privacy of personal information in physicians' private offices. The College and BCMA have both officially adopted this Code, which the BCMA recently published in the British Columbia Medical Journal, and which the College has included in its Policy Manual.

The Code is designed to guide physicians and their staff in the appropriate collection, use, disclosure, and overall handling of personal information in their private offices. It reflects and codifies current medical practices, based upon relevant legislation, ethical requirements, and legal precedent. The Code also incorporates the basic privacy principles of the B.C. *Freedom of Information and Protection of Privacy Act* and the Canadian Standards Association's *Model Privacy Code*.

The Office feels that the Physician's Code is a significant achievement for British Columbia and its medical community. It is pleased that the Canadian Medical Association is now reviewing the Code as it develops its own for all physicians across Canada. The Code will be kept under ongoing revision to reflect emergent issues in the practice of medicine in B.C. and the continuing automation of health records. A copy of the Code is set out at the end of this chapter.

D. Personal Information Sharing between Health Care Providers and Police: a Discussion Paper

The collection and disclosure of personal information by health care providers to policing agencies is a somewhat controversial issue in British Columbia. Concerned stakeholders asked the Office of the Information and Privacy Commissioner to assist them in clarifying the issues. In particular, they wanted suggestions for ways to resolve disagreements about the collection and disclosure of personal information with respect to the application of the *Freedom of Information and Protection of Privacy Act*.

In consultation with the various police and health care bodies struggling with these issues, the Office issued a discussion paper in March of 1998 entitled, "Collection and Disclosure of Personal Information between Health Care Providers and Policing Agencies under the B.C. *Freedom of Information and Protection of Privacy Act*." The Office has circulated the paper amongst stakeholders and other interested parties, and put it on its web site for a 90-day public consultation period until June 15, 1998.

As the discussion period was not yet complete at the time of writing, the Office has not yet fully benefitted from public and stakeholder feedback. However, in preliminary discussions with affected or interested individuals and groups, the Office determined that certain law enforcement situations were especially problematic when sorting out the competing goals of effective law enforcement and appropriate protection of personal privacy:

- when conducting criminal investigations;

- when apprehending individuals wanted by police;

- in the promotion of public safety and security; and

• in ensuring the safety and security of a health care facility and its staff and patients.

The Office's overall goal in issuing the paper is to work with police and health care providers to establish appropriate policies and guidelines for the collection and disclosure of personal information under the *Freedom of Information and Protection of Privacy Act*. The Office expects to issue an updated version of the paper in late 1998.

E. College of Pharmacists – Follow-Up on PharmaNet

The Commissioner's Office recently reviewed a selection of the College of Pharmacists' audit and inspection reports on the use of the PharmaNet system by pharmacists to see what College inspectors had found in their review of pharmacists' records and their use of the PharmaNet system. The Office also wanted to determine how many individuals had asked to see their PharmaNet profiles and whether any problems with PharmaNet had arisen.

The College provided the Office with several audit reports of recent pharmacy inspections. Most revealed no serious problems with physical security issues and that pharmacists had addressed any deficiencies satisfactorily. The Office suggested, however, that the College post signs on PharmaNet in PharmaNet pharmacies to ensure that they maintain proper computer backup procedures and remind pharmacists to tell patients about the system's patient keyword feature (similar to a password) that allows patients to limit access to their pharmacy files. The Office also asked the College to arrange for a member of the Commissioner's staff to attend an audit of a pharmacy in the near future.

F. BC Cancer Agency Site Visit Report

The Commissioner's Office conducted a site visit to the BC Cancer Agency in January of 1997, releasing a formal report on its findings in April of 1997. The site visit highlighted some positive and some troublesome issues, which are discussed in the report. The Commissioner noted, for example, that individuals with a cancer diagnosis are not informed, in a consistent manner, that the Agency is collecting their medical and demographic information and using it for the purposes of research and planning. The Office advised the Agency to inform individuals that it is collecting, storing, and possibly sharing their personal information. The Office also told the Agency that it is imperative for it to tell individuals how it will use their information.

The Office was pleased to note that the Agency stores health records by unique number, rather than alphabetically, and that manual files are well organized with separate tabbed sections that eliminate the need for staff to browse them in order to locate relevant information. At the time of the Commissioner's visit, however, staff were not required to change their computer passwords regularly, nor was there an operating audit trail to track access to the electronic data bases, both of which diminish data security considerably. The Commissioner recommended that these practices be implemented.

Since research is a central activity of the Agency, there is information-sharing with many local, national, and international partners. The Agency uses research agreements for these purposes, but the Office noted that the ones currently in use by the Agency did not mention the Agency's obligations under the *Freedom of Information and Protection of Privacy Act*, nor did they set out the terms and conditions for researchers accessing personal information, as required by section 35 of the Act. The Commissioner advised the Agency to remedy these situations.

Further, the Commissioner noted that informed consent should be the central principle for the Agency when it uses personal information in privacy-sensitive research. He advised the Agency to ensure that it incorporates informed consent into all its research projects involving the use of identifiable personal information. The Commissioner also advised the Agency to develop a consent form that provides a detailed explanation of what information it will collect from individuals, who will have access to it, and

how it will be used and protected.

The Commissioner's Office commends the BC Cancer Agency for its responsiveness to the Office's scrutiny and recommendations, as well as its clear desire to bring the Agency's current privacy policies and practices into compliance with the *Freedom of Information and Protection of Privacy Act*.

* The BC Cancer Agency site visit report is available on the Office's web site at http://www.oipcbc.org

G. Submission to Industry Canada on Privacy Protection in the Private Sector

In January of 1998, Industry Canada issued a discussion paper entitled, "The Protection of Personal Information: Building Canada's Information Economy and Society." The paper called for submissions responding to fifteen questions it posed concerning the specific structure and function of proposed federal legislation to regulate the collection, use and disclosure of personal information in the private sector.

The Commissioner's Office made its submission in March of 1998. The full text, including a comparative table of fair information practices evaluating the strengths and weaknesses amongst the B.C. *Freedom of Information and Protection of Privacy Act*, the European Union's Directive on Data Protection, and the Canadian Standards Association's Model Code, is available on the Commissioner's Office web site at http://www.oipcbc.org. The key points of the submission are set out briefly below:

• The Commissioner's Office strongly recommends that the Government of Canada and the provincial legislatures under their respective jurisdictions introduce statutory privacy rights for the protection of personal information in the custody or under the control of private sector bodies. Legislation is the only forceful and legitimate means to categorically and comprehensively identify and enforce an established set of data protection rights in the private sector for Canadians.

• The principle of informed consent should be the legal and moral fulcrum of the legislation, since it is the means by which individuals may exercise informational self-determination. The other key principles should be: the transparency of personal data use and the existence of enforceable legal rights to fair information practices. These are fundamental principles of the European Union's Directive on Data Protection and should also be reflected in Canadian law.

• There must be an independent administrative authority to promote and protect private sector privacy rights and to ensure fair information practices. This authority can be expected to investigate and process complaints from individuals, conduct audits for compliance, and enforce the rights of individuals to their own data.

• All new technological advances or systems for processing personal information should be subject to privacy impact assessments. This process ensures that any privacy concerns are quickly identified and addressed prior to potential breaches. It will also serve to raise awareness about personal privacy within the private sector.

• The public must be educated about the impact of electronic commerce practices on the privacy rights and interests of individuals.

The Commissioner stated at the conclusion of his submission that: "The privacy of personal information goes to the heart of our identity as human beings. It is a fundamental democratic, human, and ethical right that deserves full and forceful legal protection."

H. Other Items

The Office also commented on a number of information-sharing agreements including: Elections BC and the Ministry of Health (Blood Recipient Notification Project); Elections BC and Elections Canada (to assist in the mutual updating of federal and provincial voters lists); the WCB and Human Resources Development Canada (to assist in the verification of information provided by applicants for WCB and/or employment insurance benefits); the Ministries of Human Resources and Education and Human Resources Development Canada (for labour market development programs); and the Ministries of Health and Children and Families (to assist in the administration of the *Child, Family and Community Services Act*).

The Office also provided comments to the Office of the Public Trustee regarding its policy on the collection and disclosure of personal information; provided advice to the BC Cancer Agency on a number of health-related privacy issues, which led, in part, to the paper, "Results of a Privacy Check-Up" discussed above; reviewed the government's security policy and its policy on the routine release of records; provided advice and guidance to the Ministry of Human Resources, the Ministry for Children and Families, and the Children's Commissioner on privacy issues, such as the disclosure of investigation reports and decisions; commented on the Ministry of Health's disclosure of personal information to the BC Cancer Agency's screening mammography program; reviewed the Ministry of Health's information and privacy policies; drafted a model Privacy Impact Assessment guide for use by public bodies in developing or modifying systems; continued to monitor new legislation for pertinent information and privacy issues; and provided advice and guidance to a variety of public bodies on the use of sections 25 and 33(p) with respect to community notification of sex offenders.

Privacy Code for Private Physicians' Offices in British Columbia

Preamble

This Code is to guide physicians and their staff members in the collection, use, disclosure, and handling of personal information in their private offices. This document reflects current practice based upon legislation, ethical requirements, and legal precedent.

The *Freedom of Information and Protection of Privacy Act* covers personal information in hospitals, mental health centres, health units, and student/employee health centres located in provincial or local government offices or post secondary institutions. It does not cover personal information in the private offices of physicians.

The Code reflects the ethical principle that information that is compiled about a patient should be held in confidence, unless the patient consents to the disclosure, or the law authorizes its disclosure, or a court orders disclosure. Since confidentiality is the cornerstone of the trust relationship between doctor and patient, a physician should ensure that his or her patients are aware of the limits to confidentiality, under certain circumstances.

This Code recognizes the need for physicians and staff members to collect and record a wide range of health-related personal information for the benefit of the patient.

The Code covers a patient's personal information that is recorded or stored by graphic, photographic, electronic, mechanical, or other means. The Code does not cover the disclosure of unrecorded information (e.g. verbal), which is governed by the ethical principle to respect the patient's right to confidentiality.

1. Collection of personal information

(1) Purpose for which personal information may be collected

In providing health care for a patient, a physician or staff member may collect personal information about a patient:

(a) when that information relates directly to and is necessary for providing continuity of health care services to a patient, or for related administrative purposes;
(b) when the collection of that information is expressly authorized by or under an Act.

(2) Sources of personal information

(a) Direct collection

(i) A physician or staff member should collect personal information about a patient directly from the patient.

(b) Indirect collection

(i) A physician or staff member may also collect personal information from another individual or organization, if the patient has authorized such collection of personal information from another person (such as a family member, or the patient's previous doctor or a consultant).
(ii) A physician or staff member may also collect personal information from another individual or organization, if the collection is specifically required by law (either by an enactment, subpoena, warrant, or court order).order).(iii) A physician or staff member may also collect personal information from another individual or organization, if the physician has reasonable grounds to believe that indirect collection is necessary for the safe and effective treatment of the patient (including urgent and immediate circumstances, or where the patient is incapable of providing the information).

(3) Accuracy of personal information

In accordance with Rule 13 of the rules under the *Medical Practitioners Act*, physicians and staff members must make every reasonable effort to ensure that personal information is recorded accurately, completely, and legibly.

2. Use of identifiable personal information

A physician or staff member may use personal information for the purpose of providing health-care services to the patient or for related administrative purposes.

Use of identifiable personal information for any other purpose (for example, research or fund raising) requires the written consent of the patient .

3. Disclosure of personal information

A physician or staff member may disclose personal information:

(1) for the purpose of providing health-care services through a referral, consultation, or report to another health-care professional who is involved with the patient's care;

(2) if the patient has consented, in writing, to its disclosure;

(3) to comply with a court order, subpoena, or requirement of an Act or regulation of British Columbia or Canada;

(4) to the College of Physicians and Surgeons of British Columbia in accordance with the *Medical Practitioners Act*;

(5) to an employee or service provider of a physician, if the information is necessary for the performance of the duties of, or for the protection of the health or safety of, the employee or the service provider;

(6) if a physician determines that compelling circumstances exist that affect anyone's health or safety, and if the physician takes all reasonable steps to inform the patient that the confidentiality of his or her personal information will be breached; or

(7) to communicate with the next of kin, or representative of the patient, or appropriate family members, in accordance with professional ethics.

4. Patient access to personal information

For the purposes of this section, "access to" means the opportunity to examine or make copies of the original record.

(1) If a patient or an authorized representative of the patient makes a request for access to personal information about a patient, a physician must comply as soon as practicable, but not later than 30 working days following the request, by:

(a) providing access to the patient or patient's representative;

(b) providing access to the remainder of the personal information where the information excepted from disclosure under subsection (2) can reasonably be severed; or
(c) providing written reasons for the refusal of access to the personal information or to any portion of the health records.

(2) The physician may refuse to disclose personal information to a patient or patient representative:

(a) where there is a significant likelihood of a substantial adverse effect on the physical, mental, or emotional health of the patient;

(b) where there is a significant likelihood of harm to another individual;

(c) if the disclosure of personal information would be an unreasonable invasion of another individual's privacy; or

(d) if the records were created or compiled in contemplation of litigation or other legal privilege.

(3) Where a physician provides access and the patient or patient's representative requests a copy of the personal information, a copy may be provided if it can reasonably be reproduced.

(4) A physician is entitled to charge a reasonable fee, commensurate with the time, cost, and effort involved and the patient's ability to pay, for the search for the record, preparation of the record for disclosure, and copying and shipping the record.

(5) Subject to subsection (2), a patient under 19 years of age may have access to a record where, in the opinion of the physician, the patient is capable of understanding the subject matter of the record.

5. Right to request correction of personal information

A patient who believes there is an error or omission in his or her personal information may request, in writing, that the physician who has custody or control of the information correct factual and biographical information.

If no correction is made in response to a written request, a physician must add the patient's request for correction to the patient's record.

On correcting a record, where the correction is required for the safe and effective treatment of the patient, a physician must notify any other individual to whom that information has been disclosed during the six-month period before the correction was requested.

6. Protection of personal information

A physician and staff members must protect the personal information of their patients by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, or disposal.

7. Retention of personal information

A physician must retain a patient's personal information in a record for at least 7 years from the date of the last entry. Where the patient is a minor, records should be kept for at least 7 years from the age of majority, which is currently 19 years of age.

8. Disposal of personal information

A physician or staff member must ensure that he or she disposes of patient records only by the following means:

(1) by effectively destroying a physical record through shredding or by complete burning; or

(2) by erasing information recorded or stored by electronic or magnetic methods on tapes, disks, cassettes, or other media in a manner that ensures that the information cannot be reconstructed.

9. Ceasing to practice

A physician must try to notify patients of his or her intention to leave the practice of medicine and the proposed securing and disposal of their personal information.

A physician should adopt a records management plan to secure or dispose of the personal information of patients to cover the following circumstances:

(1) ceasing practice; or

(2) in the event that the physician dies or becomes unable to practice.

A physician should provide in his or her will for a responsible person to ensure the security or disposal of patient personal information.

A physician who ceases to practice for any reason must provide the College of Physicians and Surgeons with a copy of his or her records management plan.

10. Contracts for handling personal information

A physician must ensure that, where personal information is transferred to any individual or organization for processing, storage, or disposal, a contract is made with that individual or organization, which includes an undertaking to maintain the confidentiality and physical security of such personal information.

11. Responsibilities and dispute resolution

A physician is accountable for his or her office's compliance with this Code, even though other individuals may be responsible for the day-to-day collection and handling of personal information.

The College of Physicians and Surgeons is responsible for handling complaints that arise from this Code that are not settled by the physician concerned.

General commentary

This privacy code is the product of a consultation amongst the College of Physicians and Surgeons of British Columbia, the B.C. Medical Association, and the Office of the Information and Privacy Commissioner for British Columbia. The intent is to reflect best practices of physicians and their staffs in the treatment of patient information. The participants included Dr. Morris Van Andel, Dr. Derryck Smith, Dr. Norm Finlayson, Dr. Mark Schonfeld, Dr. Ray Simkus, Commissioner David Flaherty, and William Trott. We are grateful to others for their critical comments on successive drafts.

The Code follows the basic privacy principles set out in the B.C. *Freedom of Information and Protection of Privacy Act* and the Canadian Standards Association's Model Privacy Code (1996).

The Code will be kept under ongoing revision to reflect the emergent realities of the practice of medicine in British Columbia and the automation of health records. The latter especially requires reasonable security and audit trails to ensure a chain of accountability for controlling access to automated patient information.

This commentary on the meaning and implications of the provisions of this Code will be expanded, particularly in response to queries and comments on the current text.

Detailed commentary

Preamble

The Code covers personal information, which means recorded information about an identifiable individual. Personal information includes the health care information in the patient record as well as identifying information such as the name, age, family status, financial history, etc.

Anyone else's opinions about a patient are the personal information of that patient.

Physicians should post this Code and provide copies of this Code in a location in their offices visible to patients in the waiting room.

While this Code covers only recorded information, verbal disclosure based on recorded information is covered by this Code. Therefore the following general discussion from the *Canadian Medical Association Journal*, 1988; 139 (Nov. 15) may assist physicians:

> You can ensure that examining rooms are adequately soundproofed, provide piped-in music throughout the office and make sure that telephone [or personal] conversations cannot be

overheard.
The Code covers the actions of a "staff member." Staff member includes employees and voluntary staff.

Section 2

In certain cases of research into rare diseases, where the research requires the inclusion of the total research population, special arrangements may be made for access to patient data with approval of an ethics committee.

Section 3

Confirmation of consent may be sought from the patient in situations where the consent is not specific or is not current.

Consent for the use or disclosure of patient personal information may not be possible in certain cases. In the event of the patient's death, surrogate consent should be sought from the person authorized to provide consent.

Compelling circumstances

Examples of disclosing patient information for compelling circumstances include situations where the maintenance of confidentiality would result in a significant risk of substantial harm to others or to the patient, if the patient is incompetent.

Section 4

The section reflects a Supreme Court of Canada decision which held that while medical records are owned by a physician who compiled the record, a patient is entitled to reasonable access to the information. The court provided that a physician may refuse access in certain circumstances. These are reflected in this section
section.

Physicians are advised not to permit unsupervised examination of the original record in order to maintain the integrity of the record.

4(1) The requirement to respond within 30 working days may be extended in extraordinary circumstances such as processing requests during a physician's holidays.

4(5) Under the *Infants Act*, section 17, a capable minor may give consent for medical treatment. In these circumstances, the physician may provide the guardian or parents access to the capable minor's record only with the minor's written authorization.

Section 6

The written policies and procedures for the physician's office should include the office's security arrangements. For guidance for security of information stored electronically, see the COACH guidelines cited below. For fax transmission guidelines, see the B.C. Office of the Information and Privacy Commissioner's fax guidelines.

Section 7

Limitation Act, section 8(1)(b), establishes the limitation period. No action may be brought against a physician, based on professional negligence or malpractice, after the expiration of 6 years from the date on which the right to bring an action arose. The Supreme Court Rules allow a writ of summons to be in force for 1 year. Therefore, the *College of Physicians and Surgeons of BC, Policy Manual,* M 4-1, June 1995, recommends retention of records for at least 7 years from the date of the last entry.

Where the patient is a minor, records should be kept at least until the patient is 26 years of age.

In cases based on misconduct of a sexual nature, there is no limitation period. The *College of Physicians and Surgeons of BC, Policy Manual,* M 4-1, June 1995, recommends that, where the patient is under a disability or where there is an untoward outcome, it may be prudent to keep the records for periods in excess of 7 years.

Section 8

The *College of Physicians and Surgeons of BC, Policy Manual* M 4-2, June 1995, states that the methods of disposing of records should be supervised.

The physician should be aware that simple deletion of automated records may not ensure that the information cannot be recovered.

The report by Dr. S. Peck [Editor's note: the report is titled Review of the Storage and Disposal of Health Care Records in British Columbia: Report to the Honourable Paul Ramsey, Minister of Health and Minister Responsible for Seniors, July, 1995] provides details on the destruction of records.

Section 9

Notification may be through a general announcement in the local press, through form letters available in the physician's office or upon request, or similar means. Person-to-person mailing or communications, while obviously effective, may not be feasible.

Section 10

This section covers individuals on contract with a physician, who are providing services such as installing a computer software program, staff of laboratories, other health professionals providing services, cleaning staff on contract with the physician's office, or companies under contract to dispose of personal information.

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XII. Informing the Public

Introduction

Section 42(1)(c) of the *Freedom of Information and Protection of Privacy Act* authorizes the Commissioner to inform the public about the Act. The Office fulfills this educational mandate by interacting with the media; participating in and hosting conferences; presenting speeches, seminars, workshops, and video conferences; and developing various public education materials and tools, such as the Office's web site, information kits, FAQs, and an information and privacy rights brochure.

Annual Information and Privacy Conference

In October of 1997, the Office, along with the University of Victoria, co-hosted its fourth annual information and privacy conference. The conference was entitled, "Surveillance Technologies: Challenges to Privacy Rights." It featured privacy experts commenting on the threats of surveillance technology to personal privacy in the workplace, and in the health, communications, and policing sectors. Topics included sessions on: Genetic Testing; The World Wide Web; Substance Abuse Testing; and Video and Workplace Surveillance. Information and Privacy Commissioner David Flaherty wrapped up the conference by making a presentation on The Future of Privacy.

The conference was held in Vancouver and Victoria. It was attended by participants of various backgrounds and interests, including public and private sector employees and members of the media. Details of next year's conference are available on the Office's web site at: http://www.oipcbc.org. Interested individuals may also contact the Office directly for further information using the contact information set out in Appendix C of this report.

May 1996 "Visions of Privacy" Conference Update

On May 9-11, 1996, the Office, in conjunction with the University of Victoria, hosted an international conference entitled "Visions for Privacy in the 21st Century: A Search for Solutions." The conference featured an impressive range of privacy experts and advocates. Representatives from several countries were in attendance, along with many of the world's privacy activists.

As a product of this opportunity for intensive interdisciplinary and international debate about the extent and nature of surveillance in the 21st Century, Colin J. Bennett and Rebecca Grant, professors of political science and business, respectively, at the University of Victoria have edited a collection of conference papers to be published in book form in November by the University of Toronto Press. It is entitled, *Visions of Privacy: Policy Choices for the Digital Age*.

In *Visions of Privacy*, experts from Canada, the United States, and the United Kingdom explore five potential paths to privacy protection: application of the principles of fair information practices; building privacy into new technologies and regulatory frameworks; factoring privacy into business practices; thinking globally; and advocating against surveillance.

Individuals interested in obtaining a copy of *Visions of Privacy* are requested to contact the University of Toronto Press directly.

Law 12 Educational Video Conference

Each year, the Commissioner's Office hosts a special event in recognition of Information Rights Week. Information Rights Week is sponsored by the Canadian Library Association and supported by provincial library associations, freedom of information and privacy associations, and Telecommunities Canada. This year Information Rights Week was from March 30 to April 5, 1998, and featured events promoting access to information in Canada.

On March 31, 1998, the Commissioner's Office, with the assistance of the Ministry of Education, hosted a special educational video conference for students on information and privacy rights. There were four main objectives:

(i) to raise awareness and understanding of information and privacy rights under the *Freedom of Information and Protection of Privacy Act* among youth in British Columbia;

(ii) to provide students with an opportunity for direct contact and interaction with the Information and Privacy Commissioner;

(iii) to provide an outlet for students to express their issues and concerns to the Commissioner, and to give the Commissioner the opportunity to respond to their queries and focus on the meaning and impact of the legislation for youths; and

(iv) to provide students with an opportunity to experience a newer, long-distance communications technology on a first-hand basis.

To that end, the Office selected three Law 12 classes, representing three main areas of British Columbia, to engage with the Commissioner in a simultaneous, one-hour question and answer video conferencing session about information and privacy rights. The participating Law 12 classes were from Nanaimo, Nelson, and Williams Lake. Prior to the video conference, students studied material about the *Freedom of Information and Protection of Privacy Act* and the Commissioner's Office, and developed questions in consultation with their teachers and fellow students. All classes assembled at a conferencing site in their own cities on March 31 and participated simultaneously in the educational event. The Commissioner started by giving a brief introduction, which was followed by several rounds of questions from the students.

The Office was impressed by the variety and quality of students' questions and interested to learn about their particular views and concerns about information and privacy law in B.C. Most of the students participating in the video conference also responded to the Office's follow-up survey of their opinions about video conferencing technology and their conclusions about their discussion with the Commissioner on information and privacy rights.

One hundred percent of the students that responded to the survey indicated that video conferencing is a useful and practical method for accessing and distributing information among individuals or groups separated by distance. Over 81 percent agreed that the question and answer format of the video conference was the best format for providing students with an opportunity to learn more about specific aspects of their information and privacy rights, since it gave them the opportunity to participate in direct discussion with the Commissioner and to learn from other students' questions.

In short, 84 percent of students responding to the survey found the event to be a positive learning experience. The Commissioner's Office is grateful for the students' and teachers' participation in this special event and is in the process of evaluating their responses and comments for consideration in the development of further educational programs and opportunities. As a first step, it has compiled an educational package for all other Law 12 classes in British Columbia and is preparing additional

materials for students of other age groups and interests.

* The transcript of the video conference is available on the Office's web site at: http://www.oipcbc.org

Information and Privacy Rights Brochure

The Office continued to distribute its practical guide to the *Freedom of Information and Protection of Privacy Act* entitled, "Your Information and Privacy Rights: A Brief Guide to the Office of the Information and Privacy Commissioner and the *Freedom of Information and Protection of Privacy Act.*" The brochure was first released in January of 1997 and is now into its second printing. It provides individuals with an easy-to-read, bird's-eye-view of information and privacy rights under the Act and how to exercise them. The brochure has been translated into Chinese and Punjabi, with plans to translate it into other languages commonly spoken in British Columbia. Individuals or groups wishing to obtain copies of the brochure are invited to visit the Office's web site at http://www.oipcbc.org for an electronic version, or to contact the Commissioner's Office directly for printed versions.

Web Site Update

The Commissioner's Office continues to update its web site with new and relevant information. The purpose of the web site is to increase public awareness of the *Freedom of Information and Protection of Privacy Act* by making information about it and the Office as broadly accessible as possible.

This year the Office added two important new features: a search engine and a hotlink page. The search engine is designed to assist those individuals wanting to research the web site and the Commissioner's Orders, Investigation Reports, and other decisions. The search feature is actually a link to the B.C. government's primary search engine, which allows individuals to search other government web sites also, either consecutively or at the same time.

The hotlink page is designed to highlight interesting or timely information and privacy documents published on the web by other individuals or agencies. The hotlink page explains how the hotlink works, and highlights the current featured document or site. Featured items rotate on a periodic basis.

The web site currently includes the following relevant materials:

- A copy the *Freedom of Information and Protection of Privacy Act*
- The Commissioner's Orders
- The Commissioner's Investigation Reports
- News releases for Orders and Investigation Reports
- Section 43 authorizations
- A Table of Concordance cross-referencing sections of the Act with the Orders
- A Table of Judicial Reviews of Commissioner's Orders linking to the B.C. Superior Courts web site
- The Office's Annual Reports for 1994/95, 1995/96, 1996/97, and 1997/98
- The Office's Information and Privacy Rights brochure

- The Office's Policies and Procedures
- Privacy Advice, including Fax and E-mail Guidelines
- Submissions by the Office to other public bodies, such as the Legislative Assembly and Industry Canada
- Copies of the Commissioner's speeches and presentations
- Information about past and future information and privacy events, such as conferences and workshops
- Links to other major information and privacy web sites across Canada and around the world
- How to contact the Commissioner's Office

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Appendix A
Financial Statement

BUDGET ALLOCATION FOR THE 1997/1998 FISCAL YEAR

Total Salaries and Benefits	$1,792,000
Total Operating Costs	$ 641,000
Total Asset Acquisitions	$ 28,000
Total Recoveries	($15,000)
Total Voted Expenditure*	$2,446,000

**The 1997/98 voted expenditure provided for a staff of 25.*

The Office of the Information and Privacy Commissioner's 1997/98 Expenditure Target reflects the annual operating costs and the funding required to achieve the goals of its jurisdiction.

Highlights for Fiscal 1997/1998

• Increased public awareness and promoted a wider public understanding of the Act and the Commissioner's role through:

• hosting an annual conference on Surveillance Technologies

• participated with the Ministry of Education in an educational video conference with Law 12 Students in Nanaimo, Nelson, and Williams Lake

• finalizing the report "Information and Privacy in Cultural Communities"

• Ensured that information on the Office was readily available by updating the information and privacy rights brochure and the Office's web site; and by producing information and FAQ packages.

• Participated in the Four Year Legislative Review of the *Freedom of Information and Protection of Privacy Act* by making two submissions to the Legislative Assembly's Special Committee.

• Released a Discussion Paper on "Collection and Disclosure of Personal Information between Health Care Providers and Policing Agencies under the BC the *Freedom of Information and Protection of Privacy Act.*

• Released three investigation reports: "An Investigation Concerning the Disclosure of Personal Information through Public Property Registries"; "Complaint Regarding a Disclosure of Personal Information by the Vancouver Police Department"; and "Video Surveillance by Public Bodies: a Discussion."

As mandated, the Office continued to:

• Develop and maintain productive working relationships with the variety of public bodies falling under the jurisdiction of the *Freedom of Information and Protection of Privacy Act*;

• Conduct investigations and audits to ensure compliance with the Act; Monitor, encourage, and where necessary enforce compliance with the Act; and

• Continue to build an integrated, competent office that responds effectively to its clients needs.

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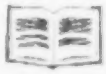
Appendix B
Office Staff List

One of the major achievements of our Office is the settlement of most cases before they would need to be brought to formal inquiry. The Office believes that this is reflective of the quality and commitment of its operational and administrative staff, who are identified below for the 1997/98 fiscal year:

Ellinore Barker	Librarian (January to May 23/97)
David Boyko	Law Co-op Student (from January 12/98)
Linda Calver	Manager, Finance and Administration
Mary Carlson	Portfolio Officer
Helen Carmichael	Practicum Student (May 5 - August 1/97)
Michelle Coulombe	Administrative Assistant (November 6/97 - January 2/98)
Lisa Crumly	Receptionist
Lorrainne A. Dixon	Director
Helga Driedger	Registrar
Judy Durrance	Intake Officer
Barbara L. Fisher	Legal Counsel (contractor) (April 1 to August 31, 1997)
David H. Flaherty	Commissioner
Celia Francis	Portfolio Officer
R. Kyle Friesen	Portfolio Officer
Mokua Gichuru	Law Co-op Student (January 2, 1997 - May 3, 1997)
Mark Grady	Portfolio Officer
Deanna Hamberg	Law Co-op Student (September 2 - December 19/97) Intake Officer (from March 11/98)
Koren Hanson	Co-op Student (May 20 - August 22/97)
Barbara Haupthoff	Senior Executive Administrator
Debbie Lovett	Legal Counsel (contractor) (from July 31, 1997)
Charmaine Lowe	Intake Officer
Peter Luttmer	Portfolio Officer
Maureen Meikle	Portfolio Officer
Karen O'Reilly	Law Co-op Student (April 28 - August 20/97)
Susan E. Ross	Legal Counsel (contractor)
Sharon Plater	Portfolio Officer
Jim Sereda	Portfolio Officer
Ralph Sketchley	Portfolio Officer
Michael Skinner	Portfolio Officer
Pamela E. Smith	Manager, Communications and Information

Darleen Taylor	Coordinator, Finance and Administration
Bill Trott	Portfolio Officer
Candace Tucknott	Administrative Assistant (February 12 - November 10/97)
Pamela Wallace	Intake Officer (January to September 19/97)
Angela Westmacott	Legal Counsel (contractor) (from July 31, 1997)
Judy Windle-Newby	Administrative Assistant (from January 1, 1998)
Jason Young	Co-op Student (May 20 - August 31, 1997) Researcher (from September 1, 1997)
Stacie Young	Administrative Assistant

Back to Previous Section Forward to Next Section Back to Table of Contents 

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Appendix C
How To Contact the Commissioner's Office

By Telephone: (250) 387-5629
Or for toll free access within British Columbia, call Enquiry BC at the number in your area below and ask to be transferred to 387-5629:
* Vancouver: 660-2421
* Victoria: 387-6121
* Elsewhere in B.C.: 1-800-663-7867

By Facsimile: (250) 387-1696

By Mail:
Office of the Information and Privacy Commissioner for British Columbia
PO Box 9038, Stn Prov Govt. Victoria, B.C. V8W 9A4

By E-mail: info@oipcbc.org

By Web Site: http://www.oipcbc.org

In Person:
Office of the Information and Privacy Commissioner for British Columbia
4th Floor, 1675 Douglas St. Victoria, B.C. V8V 1X4

(NOTE: The Office does not accept requests for review or privacy complaints by e-mail, since it is not an acceptably secure medium for this purpose. The Office accepts all other enquiries by any of the means of contact set out above.)

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